Appointment

**From:** Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent:** 4/29/2021 4:47:02 AM
**To:** +17346455221; Application 207a6836-d031-4764-a9d8-c1193f455f21; Francis, Dick E SEPCO-GRA [dick.francis@shell.com]; Craig, Steve SEPCO-UPU/M [Steve.Craig@shell.com]; Stephen Fotis [scf@vnf.com]; Tiesman, Lisa L SEPCO-UPU/M/H [Lisa.Tiesman@shell.com]; Funk, Marnie SHLOIL-GRA [Marnie.Funk@shell.com]; Kovach, William G GSUSI-PTS/E [William.Kovach@shell.com]; Gunning, Paul [Gunning.Paul@epa.gov]; Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e; Application b102ccd8-1925-448b-90a7-b083aba25074; Cozzie, David [Cozzie.David@epa.gov]; Culligan, Kevin [Culligan.Kevin@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Kim, Eun [Kim.Eun@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]

**Subject:** Meeting (ScheduledMeeting)/Thread Id: 19:meeting_MDBkNDJjMjItZjQ2YS00MjVhLWE2MzctNDE5NGY5YmI4MjIy@thread.v2/Communication Id: 530657e0-796c-4af8-8e3d-df862ee8484e/+17346455221,Francis, Dick E SEPCO-GRA,Craig, Steve SEPCO-UPU/M,Stephen Fotis,Tiesman, Li...

**Start:** 4/28/2021 7:58:42 PM
**End:** 4/28/2021 8:34:42 PM
**Show Time As:** Busy

**Recurrence:** (none)

**Required Attendees:** +17346455221; Application 207a6836-d031-4764-a9d8-c1193f455f21; Francis, Dick E SEPCO-GRA; Craig, Steve SEPCO-UPU/M; Stephen Fotis; Tiesman, Lisa L SEPCO-UPU/M/H; Funk, Marnie SHLOIL-GRA; Kovach, William G GSUSI-PTS/E; Gunning, Paul; Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e; Application b102ccd8-1925-448b-90a7-b083aba25074; Cozzie, David; Culligan, Kevin; Goffman, Joseph; Kim, Eun; Grundler, Christopher; Carbonell, Tomas

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Start Time (UTC): 4/28/2021 7:58:42 PM
End Time (UTC): 4/28/2021 8:34:42 PM
Duration: 00:35:59.2359485

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[4/28/2021 8:00:51 PM (UTC)] dick.francis@shell.com joined.
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[4/28/2021 8:00:50 PM (UTC)] Steve.Craig@shell.com joined.
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[4/28/2021 8:01:15 PM (UTC)] scf@vnf.com joined.
[4/28/2021 8:34:32 PM (UTC)] scf@vnf.com left.
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[4/28/2021 8:34:36 PM (UTC)] Lisa.Tiesman@shell.com left.
[4/28/2021 8:00:52 PM (UTC)] Marnie.Funk@shell.com joined.
[4/28/2021 8:34:30 PM (UTC)] Marnie.Funk@shell.com left.
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[4/28/2021 8:05:02 PM (UTC)] Application b102ccd8-1925-448b-90a7-b083aba25074 joined.
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[4/28/2021 7:59:34 PM (UTC)] Cozzie.David@epa.gov joined.
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[4/28/2021 8:34:40 PM (UTC)] Culligan.Kevin@epa.gov left.
[4/28/2021 8:03:23 PM (UTC)] Goffman.Joseph@epa.gov joined.
[4/28/2021 8:34:33 PM (UTC)] Goffman.Joseph@epa.gov left.
[4/28/2021 8:02:59 PM (UTC)] Kim.Eun@epa.gov joined.
[4/28/2021 8:34:33 PM (UTC)] Kim.Eun@epa.gov left.
[4/28/2021 8:03:44 PM (UTC)] grundler.christopher@epa.gov joined.
[4/28/2021 8:34:32 PM (UTC)] grundler.christopher@epa.gov left.
[4/28/2021 8:02:54 PM (UTC)] Carbonell.Tomas@epa.gov joined.
[4/28/2021 8:34:33 PM (UTC)] Carbonell.Tomas@epa.gov left.

Appointment

**From**: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
**Sent**: 4/10/2021 12:31:55 AM
**To**: Stephen Fotis (Guest) [scf@vnf.com]; Britt Fleming [bsf@vnf.com]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]

**Subject**: Meeting (ScheduledMeeting)/Thread Id: 19:meeting_OGQwZmE2ZDMtMDFlYy00ODRmLTk2ZjctYTJiMzBhYTg1YTJk@thread.v2/Communication Id: 10b501ba-276c-4c70-97f6-bd74dc8ff82f/Stephen Fotis (Guest),Britt Fleming,Carbonell, Tomas

**Start**: 4/9/2021 3:59:40 PM
**End**: 4/9/2021 4:18:41 PM
**Show Time As**: Busy

**Recurrence**: (none)

**Required Attendees**: Stephen Fotis (Guest); Britt Fleming; Carbonell, Tomas

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Start Time (UTC): 4/9/2021 3:59:40 PM
End Time (UTC): 4/9/2021 4:18:41 PM
Duration: 00:19:01.2922860

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[4/9/2021 3:59:40 PM (UTC)] Carbonell.Tomas@epa.gov joined.
[4/9/2021 4:18:41 PM (UTC)] Carbonell.Tomas@epa.gov left.
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Appointment

**From**: Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent**: 6/4/2021 4:13:39 AM
**To**: Funk, Marnie SHLOIL-GRA [Marnie.Funk@shell.com]; Stephen Fotis [scf@vnf.com]; Rakosnik, Delaney [rakosnik.delaney@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Gunning, Paul [Gunning.Paul@epa.gov]; Culligan, Kevin [Culligan.Kevin@epa.gov]; Kim, Eunjung [Kim.Eun@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]

**Subject**: Meeting (ScheduledMeeting)/Thread Id: 19:meeting_MTBiYjQ2MzgtMTZmZi00MzU2LWExNTItYmRlZjBhOTU2ZjU3@thread.v2/Communication Id: eeb7bcdb-0954-46f1-98a4-bbc85d053ec3/Funk, Marnie SHLOIL-GRA,Stephen Fotis,Rakosnik, Delaney,Grundler, Christopher,Carbonell, ...

**Start**: 6/3/2021 7:24:44 PM
**End**: 6/3/2021 8:01:46 PM
**Show Time As**: Busy

**Recurrence**: (none)

**Required Attendees**: Funk, Marnie SHLOIL-GRA; Stephen Fotis; Rakosnik, Delaney; Grundler, Christopher; Carbonell, Tomas; Gunning, Paul; Culligan, Kevin; Kim, Eunjung; Goffman, Joseph

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Start Time (UTC): 6/3/2021 7:24:44 PM
End Time (UTC): 6/3/2021 8:01:46 PM
Duration: 00:37:02.5207276

[6/3/2021 7:33:35 PM (UTC)] Marnie.Funk@shell.com joined.
[6/3/2021 8:01:44 PM (UTC)] Marnie.Funk@shell.com left.
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[6/3/2021 7:24:44 PM (UTC)] rakosnik.delaney@epa.gov joined.
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[6/3/2021 8:01:26 PM (UTC)] grundler.christopher@epa.gov left.
[6/3/2021 7:33:29 PM (UTC)] Carbonell.Tomas@epa.gov joined.
[6/3/2021 8:01:46 PM (UTC)] Carbonell.Tomas@epa.gov left.
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[6/3/2021 7:33:29 PM (UTC)] Goffman.Joseph@epa.gov joined.
[6/3/2021 8:01:45 PM (UTC)] Goffman.Joseph@epa.gov left.
```

Contact

**Full Name**: Stephen Fotis

**E-mail**: scf@vnf.com

Task

**Subject**: Call Stephen Fotis
**Start Date**: 5/19/2021
**Due Date**: 5/19/2021

**Status**: Not Started
**Percent Complete**: 0

**Total Work**: 0
**Actual Work**: 0

**Owner**: Carbonell, Tomas

Message

**From:** Carbonell, Tomas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=15EC2A6AD2934C669F6A675E7CF4961B-CARBONELL,]
**Sent:** 3/2/2021 5:53:09 PM
**To:** Stephen Fotis [scf@vnf.com]
**CC:** Britt Fleming [bsf@vnf.com]
**Subject:** RE: Orsted - OCS Materials Previously Submitted to EPA

Thank you Stephen and Britt – look forward to connecting later today. Best,

Tomás

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Tuesday, March 2, 2021 11:39 AM
**To:** Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>
**Subject:** Orsted - OCS Materials Previously Submitted to EPA

Tomas – Thanks for making time this afternoon (at 4 PM) to talk briefly with Britt and me on the OCS air permitting requirements for offshore wind farms. We thought it might be useful for you to have all of the materials that we submitted to EPA last year on behalf of Orsted regarding the treatment of cable-laying vessels under the OCS permitting regulations. While not planning to cover these materials in detail during today's call, we will likely be referring to them generally and thought it would be best for you to have them for your reference.
Look forward to talking later today.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com

Appointment

**From:** Carbonell, Tomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15ec2a6ad2934c669f6a675e7cf4961b-Carbonell,]
**Sent:** 3/17/2021 4:38:16 PM
**To:** Stephen Fotis [scf@vnf.com]

**Subject:** Accepted: OCS Air Permitting Issues
**Location:** Ex. 6 Personal Privacy (PP)

**Start:** 3/17/2021 5:00:00 PM
**End:** 3/17/2021 5:30:00 PM
**Show Time As:** Busy

Message

**From:** Carbonell, Tomas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=15EC2A6AD2934C669F6A675E7CF4961B-CARBONELL,]
**Sent:** 5/8/2021 5:20:13 PM
**To:** Stephen Fotis [scf@vnf.com]
**CC:** Britt Fleming [bsf@vnf.com]
**Subject:** RE: Two Things on Orsted and Offshore Wind

Hi Stephen, thanks for your note and sorry for the delay. I'm working with OAQPS to get clarity on the status of the CLV issue and to see what further information we can provide.

I also appreciate your interest in having a broader meeting on OCS air permitting issues. When you are ready to send a meeting request, please feel free to send it to me and cc Delaney Rakosnik (rakosnik.delaney@epa.gov). Delaney handles our external meeting requests and can help work with you on logistics. Have a good weekend,

Tomás

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Sunday, May 2, 2021 12:32 PM
**To:** Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>
**Subject:** Two Things on Orsted and Offshore Wind

Hi Tomas – I just wanted to check in quickly with you on two things related to Orsted and the development of offshore wind (OSW) projects. The first matter relates to our prior discussions about organizing an informal "virtual" session on OCS air permitting issues with you, Joe, Vicki, and other appropriate EPA staff. This session would not be limited to Orsted, but would include the major OSW trade association (American Clean Power Association) as well as other major OSW developers. In response to your suggestion, we are in the final stages of developing a suggested agenda of topics for this OSW session. We would like to send the draft agenda for your quick review and input first, as well as any suggestion on the best way to make this meeting request. Once I send the draft agenda, your input on both of those issues would be much appreciated. The second matter relates to the status of EPA finalizing its response to Orsted on cable-laying vessel issue. We know that these matters take time, but the client would appreciate alerts if there are going to be any major delays in the issuance of a final letter. Other than this, the client understands that they just need to be patient.
Thanks,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

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(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com

Appointment

**From:** Kabanda, Thierry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1a9a772e3c946cb99a35da45f43de6c-Kabanda, Th]
**Sent:** 2/22/2021 7:32:24 PM
**To:** Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Stephen Fotis [scf@vnf.com]; Kim, Eun [Kim.Eun@epa.gov]
**CC:** Britt Fleming [bsf@vnf.com]

**Subject:** Meet with Stephen Fotis of Van Ness Feldman LLP
**Attachments:** RE: OCS Air Permits for Offshore Wind Projects
**Location:** Microsoft Teams Meeting

**Start:** 3/2/2021 9:00:00 PM
**End:** 3/2/2021 9:30:00 PM
**Show Time As:** Busy

**Required Attendees:** Stephen Fotis; Kim, Eun
**Optional Attendees:** Britt Fleming

RE: OCS Air Permits for Offsh...

Please forward as appropriate.

# Microsoft Teams meeting

**Join on your computer or mobile app**
Click here to join the meeting
**Or call in (audio only)**
Ex. 6 Personal Privacy (PP) United States, Washington DC
Phone Conference I Ex. 6 Personal Privacy (PP)
Find a local number | Reset PIN
By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.
Learn More | Meeting options

Message

**From**: Stephen Fotis [scf@vnf.com]
**Sent**: 2/22/2021 4:45:09 PM
**To**: Kabanda, Thierry [Kabanda.Thierry@epa.gov]
**CC**: OAR Invitations [OAR_Invitations@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Rakosnik, Delaney [rakosnik.delaney@epa.gov]
**Subject**: RE: OCS Air Permits for Offshore Wind Projects

Hi Thierry – Many thanks for all of your assistance in facilitating a discussion on the Orsted offshore air permitting issues. Yes, call at 3 PM on March 2nd works for me. I really appreciate you facilitating that "prep" call with Tomas. Please let Tomas know that I would like to loop into the call Britt Fleming from our firm, who has been assisting me on this matter. Tomas knows Britt very well and I would not expect that this would to be a problem. Also, a larger call with Orsted representatives and EPA staff the week of March 7 works well with us.
Best regards,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com



**From:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Sent:** Monday, February 22, 2021 10:47 AM
**To:** Stephen Fotis <scf@vnf.com>
**Cc:** OAR Invitations <OAR_Invitations@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Rakosnik, Delaney <rakosnik.delaney@epa.gov>
**Subject:** FW: OCS Air Permits for Offshore Wind Projects

Caution: External Email.

Good morning Stephen,

Tomas would like to do a one on one with you sometimes next week and we are looking to schedule the group meeting for the week of the 7th of March. Would you happen to have time nest Tuesday, March 2nd for a quick call at 3 PM?

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Wednesday, February 17, 2021 3:29 PM
**To:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Cc:** Campbell, Ann <Campbell.Ann@epa.gov>; Rakosnik, Delaney <rakosnik.delaney@epa.gov>
**Subject:** RE: OCS Air Permits for Offshore Wind Projects

Thierry – Many thanks for your assistance in scheduling a meeting with Tomas. As requested, I am providing to you a completed external meeting request form that provides the requested information. In addition, if possible, I would like to arrange a short conversation with Tomas on general process matters for the upcoming meeting given that Tomas will likely bring in many of the same OAQPS staff with whom we met last December. To maximize the productivity of our meeting, it would be useful if Tomas and I had an opportunity to discuss briefly on how best to proceed in order to resolve this outstanding permitting issues. If a short call with Tomas is not possible, no worries. But I thought it would make sense for Tomas and me to talk if possible.
Thanks again for your assistance.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com



**From:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Sent:** Wednesday, February 17, 2021 9:51 AM
**To:** Stephen Fotis <scf@vnf.com>
**Cc:** Campbell, Ann <Campbell.Ann@epa.gov>; Rakosnik, Delaney <rakosnik.delaney@epa.gov>
**Subject:** FW: OCS Air Permits for Offshore Wind Projects



Good morning Stephen,

Please see attached meeting request for you to fill out and return to our office. As soon I we get this back, we will work to schedule this meeting with you group. Thank you.

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Tuesday, February 16, 2021 10:17 AM
**To:** Carbonell, Tomas <Carbonell.Tomas@epa.gov>

**Cc:** Britt Fleming <bsf@vnf.com>
**Subject:** FW: OCS Air Permits for Offshore Wind Projects

Hi Tomas – I am just checking in regarding our inquiry sent about a week ago. We understand how busy you must be with the transition on many high-priority air regulatory issues. However, it would be greatly appreciated if you could quickly get back to Britt and me, confirming that you have received our email and provide a general estimate on timing for having a preliminary conversation regarding the process for engaging on this OCS air permitting issue – which is very important for developing and bringing online offshore wind energy projects as expeditiously as possible.
Thanks very much and hope all is well with you.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com



---

**From:** Stephen Fotis
**Sent:** Tuesday, February 9, 2021 1:58 PM
**To:** 'carbonell.tomas@epa.gov' <carbonell.tomas@epa.gov>; 'arroyo.vicki@epa.gov' <arroyo.vicki@epa.gov>; 'arroyo.victoria@epa.gov' <arroyo.victoria@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>
**Subject:** OCS Air Permits for Offshore Wind Projects

Dear Tomas and Vicki – We wanted to touch base with both of you regarding an important air permitting issue that EPA needs to address for facilitating the rapid decarbonization of the electric power sector. Oddly enough, this issue pertains to the air permitting requirements that apply to the many offshore wind energy projects that are now being developed very quickly on the Outer Continental Shelf (OCS). Over the last year or so, our firm has been assisting Orsted Wind Power North America LLC (Orsted) in working through the many complicated OCS air permitting issues that may apply to such offshore windfarms under the new source review (NSR) program. For your reference, Orsted is a global leader in the development, construction, and operation of offshore wind farms. In the United States, Orsted is actively working to build and bring online more than 15,000 megawatts of new offshore wind generating capacity by 2030. This effort will require Orsted to obtain separate OCS air permits pursuant to 40 C.F.R. Part 55 for the construction and operation of several new wind projects off the eastern seaboard.

One OCS air issue of great importance pertains to whether and how the NSR permitting requirements should apply to pull-ahead anchor cable-laying vessels (CLVs) in the development of wind farm projects on the OCS. Orsted and other offshore wind developers must use the CLVs to install offshore electric transmission cables connecting these new offshore wind farms on the OCS to landfall locations where the cables connect to

onshore substations and related infrastructure. Needless to say, this is a complicated issue of first impression for which Orsted is seeking the policy and regulatory guidance of EPA headquarters. Over the last year or so, our efforts have included extensive consultation with both EPA headquarters and Region 1, who is now reviewing Orsted's air OCS permit for the South Fork Wind Farm off the east coast. Notably, we had extensive discussions last fall with your staff at OAQPS in RTP North Carolina (including Raj Rao, Juan Santiago, and Jessica Montanez), which included a lengthy 2-hour EPA teleconference call with your staff from OAQPS, various EPA Regions, and OGC. I am attaching hereto for your reference a detailed regulatory analysis that we submitted early last fall to EPA on these key air OCS permitting issues. There are other written materials addressing this issue that we have shared with EPA staff, including a PowerPoint presentation used for the teleconference that we can make available to you as appropriate.

We believe EPA guidance on the CLV air permitting issue is necessary to assure consistency among the EPA regions and expedite the issuance of OCS NSR permits for offshore wind projects along the Atlantic seaboard. In the case of Orsted alone, we are now in the process of developing offshore wind farms for South Fork Wind, Ocean Wind, Revolution Wind, Sunrise Wind, and Skipjack Wind. As a next step, I would like to suggest scheduling a brief telephone call with at least Tomas so that we can informally discuss the process that EPA will use to move forward with this air permitting matter. We understand that there are many important air policy and regulatory issues demanding your time and attention during this initial transition period for the Biden EPA. While wanting to be respectful of those many competing demands and priorities, we believe that this air OCS permitting issue – while complicated and somewhat in the weeds – is an important permitting matter that must be resolved in order to accelerate the deployment of large amounts of offshore wind projects necessary for achieving the ambitious clean energy goals of the Biden Administration.

I hope that all is going well with your transition into EPA. It is obviously a huge undertaking and responsibility. I look forward to hearing back from you about potential times for a discussion. We are relatively free later this week and early next week for a call.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

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Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com

Appointment

**From:** Stephen Fotis [scf@vnf.com]
**Sent:** 3/17/2021 4:35:23 PM
**To:** Stephen Fotis [scf@vnf.com]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Britt Fleming [bsf@vnf.com]

**Subject:** OCS Air Permitting Issues
**Location:** Ex. 6 Personal Privacy (PP)

**Start:** 3/17/2021 5:00:00 PM
**End:** 3/17/2021 5:30:00 PM
**Show Time As:** Busy

**Recurrence:** (none)

Stephen Fotis is inviting you to a scheduled meeting.

Join by URL:

Ex. 6 Personal Privacy (PP)

Or join by phone:

Dial: Ex. 6 Personal Privacy (PP)
Meeting ID: Ex. 6 Personal Privacy (PP)

Or join from a H.323/SIP room system:

Dial: Ex. 6 Personal Privacy (PP)
Meeting ID: Ex. 6 Personal Privacy (PP)
Ex. 6 Personal Privacy (PP)

Appointment

**From:** Kabanda, Thierry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1a9a772e3c946cb99a35da45f43de6c-Kabanda, Th]
**Sent:** 4/7/2021 12:44:26 PM
**To:** Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Stephen Fotis [scf@vnf.com]
**CC:** Britt Fleming [bsf@vnf.com]

**Subject:** Checking In with Stephen Fotis
**Location:** Microsoft Teams Meeting

**Start:** 4/9/2021 4:00:00 PM
**End:** 4/9/2021 4:15:00 PM
**Show Time As:** Busy

**Required Attendees:** Stephen Fotis
**Optional Attendees:** Britt Fleming

---

# Microsoft Teams meeting

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Appointment

**From:** Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent:** 5/26/2021 6:31:21 PM
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Stephen Fotis [scf@vnf.com]; Marnie.Funk@shell.com; Kim, Eunjung [Kim.Eun@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Culligan, Kevin [Culligan.Kevin@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Harvey, Reid [Harvey.Reid@epa.gov]
**CC:** Gunning, Paul [Gunning.Paul@epa.gov]

**Subject:** Meeting with Shell
**Attachments:** External meeting request - EPA (May 26, 2021).DOCX
**Location:** Microsoft Teams Meeting

**Start:** 6/3/2021 7:30:00 PM
**End:** 6/3/2021 8:00:00 PM
**Show Time As:** Busy

**Required Attendees:** Goffman, Joseph; Carbonell, Tomas; Stephen Fotis; Marnie.Funk@shell.com; Kim, Eunjung; Peter Tsirigotis (Tsirigotis.Peter@epa.gov); Culligan, Kevin; Grundler, Christopher; Harvey, Reid
**Optional Attendees:** Gunning, Paul

External meeting request - EPA (M...

---

# Microsoft Teams meeting

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# *[ SEQ CHAPTER \h \r 1]External Meeting Request Form for OAR*

Today's Date: **May 26, 2021**

Requesting Organization: **Shell Oil Company (thru Van Ness Feldman)**

Title of the Meeting: **Clean Air Act regulation of methane emissions from oil and gas sector**

Purpose: **To follow-up on initial discussions regarding possible options, approaches, and strategies for developing new regulations for limiting methane emissions from existing oil and gas sources.**

Background: **The regulation of methane is an area where Shell has been a leader and looks forward to working constructively and proactively with EPA.**

Is this meeting related to ongoing litigation: **No.**

Earliest possible date for the meeting: **Targeted time is June 3 at 3:30 PM**

Last possible date for the meeting: **Targeted time is June 3 at 3:30 PM**

Is the meeting urgent and if so, why:

Requested Time Length: **30 minutes**

Have you met with anyone within EPA:

Invitees: **Joe Goffman and Tomas Carbonell**

External Participants (to include email addresses): **Stephen Fotis of Van Ness Feldman and Marnie Funk of Shell**

Teleconference Required: **Yes**

Video Conference Required: **Yes**

Point of Contact for the Meeting: **Stephen Fotis of Van Ness Feldman: 202 413-2321 and** [ HYPERLINK "mailto:scf@vnf.com" ]

***Please email this form back to OAR_Invitations@epa.gov***

Message

**From**: Campbell, Ann [Campbell.Ann@epa.gov]
**Sent**: 2/17/2021 9:44:08 PM
**To**: Kabanda, Thierry [Kabanda.Thierry@epa.gov]
**Subject**: RE: OCS Air Permits for Offshore Wind Projects

I would double check with Tomas to see if he would prefer that you wait until after the briefing to begin scheduling or if he's comfortable with your doing it now and scheduling it for 2-3 weeks out. Please and thank you.

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

**From:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Sent:** Wednesday, February 17, 2021 4:41 PM
**To:** Campbell, Ann <Campbell.Ann@epa.gov>
**Subject:** RE: OCS Air Permits for Offshore Wind Projects

Yes. I'm scheduling it for the 25th of February.

**From:** Campbell, Ann <Campbell.Ann@epa.gov>
**Sent:** Wednesday, February 17, 2021 4:34 PM
**To:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Subject:** RE: OCS Air Permits for Offshore Wind Projects

Did the briefing with the program get scheduled? I think I saw an internal meeting request was sent in, correct?

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

**From:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Sent:** Wednesday, February 17, 2021 4:30 PM
**To:** Campbell, Ann <Campbell.Ann@epa.gov>
**Subject:** FW: OCS Air Permits for Offshore Wind Projects

Does this meeting need to be further discussed or is it safe to say, we are ready to move forward and schedule? I was going to bring it up at round table tomorrow.

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Wednesday, February 17, 2021 3:29 PM
**To:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Cc:** Campbell, Ann <Campbell.Ann@epa.gov>; Rakosnik, Delaney <rakosnik.delaney@epa.gov>
**Subject:** RE: OCS Air Permits for Offshore Wind Projects

Thierry – Many thanks for your assistance in scheduling a meeting with Tomas. As requested, I am providing to you a completed external meeting request form that provides the requested information. In addition, if possible, I would like to arrange a short conversation with Tomas on general process matters for the upcoming meeting given that Tomas will likely bring in many of the same OAQPS staff with whom we met last December. To maximize the productivity of our

meeting, it would be useful if Tomas and I had an opportunity to discuss briefly on how best to proceed in order to resolve this outstanding permitting issues. If a short call with Tomas is not possible, no worries. But I thought it would make sense for Tomas and me to talk if possible.
Thanks again for your assistance.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com



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**From:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Sent:** Wednesday, February 17, 2021 9:51 AM
**To:** Stephen Fotis <scf@vnf.com>
**Cc:** Campbell, Ann <Campbell.Ann@epa.gov>; Rakosnik, Delaney <rakosnik.delaney@epa.gov>
**Subject:** FW: OCS Air Permits for Offshore Wind Projects

Caution: External Email.

Good morning Stephen,

Please see attached meeting request for you to fill out and return to our office. As soon I we get this back, we will work to schedule this meeting with you group. Thank you.

---

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Tuesday, February 16, 2021 10:17 AM
**To:** Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>
**Subject:** FW: OCS Air Permits for Offshore Wind Projects

Hi Tomas – I am just checking in regarding our inquiry sent about a week ago. We understand how busy you must be with the transition on many high-priority air regulatory issues. However, it would be greatly appreciated if you could quickly get back to Britt and me, confirming that you have received our email and provide a general estimate on timing for having a preliminary conversation regarding the process for engaging on this OCS air permitting issue – which is very important for developing and bringing online offshore wind energy projects as expeditiously as possible.
Thanks very much and hope all is well with you.
Best,

Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com



**From:** Stephen Fotis
**Sent:** Tuesday, February 9, 2021 1:58 PM
**To:** 'carbonell.tomas@epa.gov' <carbonell.tomas@epa.gov>; 'arroyo.vicki@epa.gov' <arroyo.vicki@epa.gov>; 'arroyo.victoria@epa.gov' <arroyo.victoria@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>
**Subject:** OCS Air Permits for Offshore Wind Projects

Dear Tomas and Vicki – We wanted to touch base with both of you regarding an important air permitting issue that EPA needs to address for facilitating the rapid decarbonization of the electric power sector. Oddly enough, this issue pertains to the air permitting requirements that apply to the many offshore wind energy projects that are now being developed very quickly on the Outer Continental Shelf (OCS). Over the last year or so, our firm has been assisting Orsted Wind Power North America LLC (Orsted) in working through the many complicated OCS air permitting issues that may apply to such offshore windfarms under the new source review (NSR) program. For your reference, Orsted is a global leader in the development, construction, and operation of offshore wind farms. In the United States, Orsted is actively working to build and bring online more than 15,000 megawatts of new offshore wind generating capacity by 2030. This effort will require Orsted to obtain separate OCS air permits pursuant to 40 C.F.R. Part 55 for the construction and operation of several new wind projects off the eastern seaboard.

One OCS air issue of great importance pertains to whether and how the NSR permitting requirements should apply to pull-ahead anchor cable-laying vessels (CLVs) in the development of wind farm projects on the OCS. Orsted and other offshore wind developers must use the CLVs to install offshore electric transmission cables connecting these new offshore wind farms on the OCS to landfall locations where the cables connect to onshore substations and related infrastructure. Needless to say, this is a complicated issue of first impression for which Orsted is seeking the policy and regulatory guidance of EPA headquarters. Over the last year or so, our efforts have included extensive consultation with both EPA headquarters and Region 1, who is now reviewing Orsted's air OCS permit for the South Fork Wind Farm off the east coast. Notably, we had extensive discussions last fall with your staff at OAQPS in RTP North Carolina (including Raj Rao, Juan Santiago, and Jessica Montanez), which included a lengthy 2-hour EPA teleconference call with your staff from OAQPS, various EPA Regions, and OGC. I am attaching hereto for your reference a detailed regulatory analysis that we submitted early last fall to EPA on these key air OCS permitting issues. There are other written materials addressing this

issue that we have shared with EPA staff, including a PowerPoint presentation used for the teleconference that we can make available to you as appropriate.

We believe EPA guidance on the CLV air permitting issue is necessary to assure consistency among the EPA regions and expedite the issuance of OCS NSR permits for offshore wind projects along the Atlantic seaboard. In the case of Orsted alone, we are now in the process of developing offshore wind farms for South Fork Wind, Ocean Wind, Revolution Wind, Sunrise Wind, and Skipjack Wind. As a next step, I would like to suggest scheduling a brief telephone call with at least Tomas so that we can informally discuss the process that EPA will use to move forward with this air permitting matter. We understand that there are many important air policy and regulatory issues demanding your time and attention during this initial transition period for the Biden EPA. While wanting to be respectful of those many competing demands and priorities, we believe that this air OCS permitting issue – while complicated and somewhat in the weeds – is an important permitting matter that must be resolved in order to accelerate the deployment of large amounts of offshore wind projects necessary for achieving the ambitious clean energy goals of the Biden Administration.

I hope that all is going well with your transition into EPA. It is obviously a huge undertaking and responsibility. I look forward to hearing back from you about potential times for a discussion. We are relatively free later this week and early next week for a call.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com

Appointment

**From:** Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent:** 4/13/2021 4:38:08 PM
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]; Stephen Fotis [scf@vnf.com]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Culligan, Kevin [Culligan.Kevin@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Kim, Eun [Kim.Eun@epa.gov]
**CC:** Marnie.Funk@shell.com; Gunning, Paul [Gunning.Paul@epa.gov]; Steve.Craig@shell.com; William.Kovach@shell.com; dick.francis@shell.com; Lisa.Tiesman@shell.com; Cozzie, David [Cozzie.David@epa.gov]

**Subject:** Meeting with Shell re: Methane & GHG
**Attachments:** External meeting request_ (002) - Shell.DOCX; External meeting request_ (002) - Shell.DOCX; RE: Shell Teleconference Request
**Location:** Microsoft Teams Meeting

**Start:** 4/28/2021 8:00:00 PM
**End:** 4/28/2021 8:30:00 PM
**Show Time As:** Busy

**Required Attendees:** Goffman, Joseph; Stephen Fotis; Carbonell, Tomas; Peter Tsirigotis (Tsirigotis.Peter@epa.gov); Mike Koerber (Koerber.Mike@epa.gov); Culligan, Kevin; Grundler, Christopher; Kim, Eun
**Optional Attendees:** Marnie.Funk@shell.com; Gunning, Paul; Steve.Craig@shell.com; William.Kovach@shell.com; dick.francis@shell.com; Lisa.Tiesman@shell.com; Cozzie, David


External meeting request_ (002) - ...


RE: Shell Teleconference ...

# Microsoft Teams meeting

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External meeting request_ (002) - ...

# *[ SEQ CHAPTER \h \r 1]External Meeting Request Form for Joe Goffman*

Today's Date: April 20, 2021

Requesting Organization: Shell Oil Company (thru Van Ness Feldman)

Title of the Meeting: Clean Air Act regulation of methane emissions from oil and gas sector

Purpose: To discuss options, approaches, and strategies for developing new regulations for limiting methane emissions from existing oil and gas sources and revising the existing methane regulations for new and modified oil and gas sources.

Background: The regulation of methane is an area where Shell has been a leader and looks forward to working constructively and proactively with EPA.

Earliest possible date for the meeting: The meeting has been schedule for Wednesday, April 28 at 4 PM.

Last possible date for the meeting:

Is the meeting urgent and if so, why?

Requested Time Length: 30 minutes

Invitees: Joe Goffman, Tomas Carbonell and other appropriate EPA staff

External Participants: Stephen Fotis of Van Ness Feldman and various Shell participants, including Marnie Funk, Dick Francis, Lisa Tiesman, William Kovach, Steve Craig, and Nicole St. Amand

Teleconference Required? Yes

Video Conference Required? Yes

Point of Contact for the Meeting: Stephen Fotis of Van Ness Feldman: 202 413-2321 and [ HYPERLINK "mailto:scf@vnf.com" ]

Appointment

**From:** Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent:** 4/23/2021 11:57:25 AM
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]; Stephen Fotis [scf@vnf.com]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Culligan, Kevin [Culligan.Kevin@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Kim, Eun [Kim.Eun@epa.gov]
**CC:** Marnie.Funk@shell.com; Gunning, Paul [Gunning.Paul@epa.gov]; Steve.Craig@shell.com; William.Kovach@shell.com; dick.francis@shell.com; Lisa.Tiesman@shell.com; Cozzie, David [Cozzie.David@epa.gov]

**Subject:** Meeting with Shell re: Methane & GHG
**Attachments:** External meeting request_ (002) - Shell.DOCX; External meeting request_ (002) - Shell.DOCX; RE: Shell Teleconference Request
**Location:** Microsoft Teams Meeting

**Start:** 4/28/2021 8:00:00 PM
**End:** 4/28/2021 8:30:00 PM
**Show Time As:** Busy

**Required Attendees:** Goffman, Joseph; Stephen Fotis; Carbonell, Tomas; Peter Tsirigotis (Tsirigotis.Peter@epa.gov); Mike Koerber (Koerber.Mike@epa.gov); Culligan, Kevin; Grundler, Christopher; Kim, Eun
**Optional Attendees:** Marnie.Funk@shell.com; Gunning, Paul; Steve.Craig@shell.com; William.Kovach@shell.com; dick.francis@shell.com; Lisa.Tiesman@shell.com; Cozzie, David


External meeting request_ (002) - ...


RE: Shell Teleconference ...

# Microsoft Teams meeting

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External meeting request_ (002) - ...

Appointment

**From:** Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent:** 5/28/2021 6:09:50 PM
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Stephen Fotis [scf@vnf.com]; Marnie.Funk@shell.com; Kim, Eunjung [Kim.Eun@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Culligan, Kevin [Culligan.Kevin@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Harvey, Reid [Harvey.Reid@epa.gov]
**CC:** Gunning, Paul [Gunning.Paul@epa.gov]

**Subject:** Meeting with Shell
**Attachments:** External meeting request - EPA (May 26, 2021).DOCX
**Location:** Microsoft Teams Meeting

**Start:** 6/3/2021 7:30:00 PM
**End:** 6/3/2021 8:00:00 PM
**Show Time As:** Busy

**Required Attendees:** Goffman, Joseph; Carbonell, Tomas; Stephen Fotis; Marnie.Funk@shell.com; Kim, Eunjung; Peter Tsirigotis (Tsirigotis.Peter@epa.gov); Culligan, Kevin; Grundler, Christopher; Harvey, Reid
**Optional Attendees:** Gunning, Paul

External meeting request - EPA (M...

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Message

**From:** Stephen Fotis [scf@vnf.com]
**Sent:** 6/14/2021 5:39:28 PM
**To:** Rao, Raj [Rao.Raj@epa.gov]
**CC:** Britt Fleming [bsf@vnf.com]; Britt Fleming [bsf@vnf.com]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
**Subject:** RE: Possible Expansion of EPA National Guidance on Air OCS Permitting Issues

Rao – Many thanks for your response and efforts to consider expanding the scope of the EPA guidance to include other air OCS permitting issues. However, please note that we would like to find a time when Britt and I can talk with you not only on expanding the scope of the national guidance, but also another related OCS air matter. In April, we had spoken to Tomas about Orsted organizing a teleconference with EPA and a few other leading offshore wind developers on several important policy air OCS issues. Tomas had advised us to making a formal meeting request to EPA and then sent to me the form to do so. Before we send in this meeting request to EPA, we would like to talk briefly with you on the objective, agenda, invited participants, and other background information regarding the meeting for your reference.
Thanks very much,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com



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**From:** Rao, Raj <Rao.Raj@epa.gov>
**Sent:** Monday, June 14, 2021 11:23 AM
**To:** Stephen Fotis <scf@vnf.com>
**Cc:** Britt Fleming <bsf@vnf.com>
**Subject:** RE: Possible Expansion of EPA National Guidance on Air OCS Permitting Issues

Caution: External Email.

Thanks for reaching out Stephen. Let me get with the OCS permitting team to evaluate some of the issues you are raising and whether it makes sense to include them in the guidance re CLVs. I will be glad to follow up with you and Britt after that.

Raj

Raj Rao, P.E.
Group Leader, New Source Review Group,
Air Quality Policy Division,
Office of Air Quality Planning and Standards (MD-C504-03)
US Environmental Protection Agency
919-541-5344

Note: Positions or views expressed here do not represent official EPA policy. Interagency Deliberative and Confidential

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**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Thursday, June 10, 2021 2:31 PM
**To:** Rao, Raj <Rao.Raj@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Subject:** Possible Expansion of EPA National Guidance on Air OCS Permitting Issues

Rao – I wanted to follow-up with you regarding EPA's plan to develop national guidance on the treatment of cable-laying vessels (CLVs) with pull ahead anchors under the OCS air permitting program. In particular, we would like to explore the possibility of EPA adding a few other discrete OCS air permitting issues to the national guidance you're currently preparing on CLVs. Examples of issues that Orsted is interested EPA addressing through national guidance pertain to such matters as –

- Defining the kind of support vessel activities that are regulated under the OCS air program;
- Permitting the use of temporary or emergency generators; and
- Aggregation rules for offshore wind projects.

During a call with Tomas on another client matter several weeks ago, I raised the possibility that EPA may want to consider expanding the scope of the EPA guidance to address some of these other types of OCS air permitting issues. As a next step, Tomas suggested that I follow up with you – which is the reason for me reaching out to you at this time. As a next step, I would propose that we find a time when Britt and I could briefly identify for you some of these issues and discuss whether it makes sense for EPA to consider also addressing them in the the EPA guidance.
Thanks very much for your consideration.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com

Appointment

**From**: Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]
**Sent**: 2/22/2021 7:32:27 PM
**To**: Carbonell, Tomas [Carbonell.Tomas@epa.gov]

**Subject**: Meeting Forward Notification: Meet with Stephen Fotis of Van Ness Feldman LLP
**Location**: Microsoft Teams Meeting

**Start**: 3/2/2021 8:00:00 PM
**End**: 3/2/2021 8:30:00 PM

**Recurrence**: (none)

## Your meeting was forwarded

Kabanda, Thierry has forwarded your meeting request to additional recipients.

### Meeting

Meet with Stephen Fotis of Van Ness Feldman LLP

### Meeting Time

Tuesday, 02 March 2021 15:00-15:30.

### Recipients

Stephen Fotis

All times listed are in the following time zone: (UTC-05:00) Indiana (East)

Sent by Microsoft Exchange Server

Message

**From**: Stephen Fotis [scf@vnf.com]
**Sent**: 3/17/2021 10:20:13 PM
**To**: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
**CC**: Britt Fleming [bsf@vnf.com]
**Subject**: Follow-up on the Air OCS Issue

Tomas – Thanks again for making time to talk with Britt and me earlier today. After talking with the client, there is no need for us to schedule another conference call with you and your team at this time. We have provided a detailed legal analysis of the OCS air permitting issue and provided the other relevant important background information for your consideration. It seems that scheduling another conference call would therefore serve no useful purpose unless you have additional questions or need further information from us. Just let us know if there is anything further we can provide or do and, if so, we will get that information to you asap. As we discussed during our call, we are now primarily focused on getting a final EPA determination on this OCS air permitting issue as soon as possible. Any information that you can provide to us now on the possible timing of an EPA determination would be greatly appreciated. We understand that it is not possible to specify a particular date, but it would be helpful to know whether it may be possible to get an EPA decision by the end of March or whether this might take longer and, if so, how much longer.
Thanks again. We appreciate all of your efforts on this matter.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com

Message

**From:** Stephen Fotis [scf@vnf.com]
**Sent:** 2/9/2021 6:57:42 PM
**To:** Carbonell, Tomas [Carbonell.Tomas@epa.gov]; 'arroyo.vicki@epa.gov' [arroyo.vicki@epa.gov]; Arroyo, Victoria [Arroyo.Victoria@epa.gov]
**CC:** Britt Fleming [bsf@vnf.com]
**Subject:** OCS Air Permits for Offshore Wind Projects
**Attachments:** FINAL DRAFT (September 30) to EPA Letter on OCS NSR Treatment of CLVs - Complete with attachment.pdf

Dear Tomas and Vicki – We wanted to touch base with both of you regarding an important air permitting issue that EPA needs to address for facilitating the rapid decarbonization of the electric power sector. Oddly enough, this issue pertains to the air permitting requirements that apply to the many offshore wind energy projects that are now being developed very quickly on the Outer Continental Shelf (OCS). Over the last year or so, our firm has been assisting Orsted Wind Power North America LLC (Orsted) in working through the many complicated OCS air permitting issues that may apply to such offshore windfarms under the new source review (NSR) program. For your reference, Orsted is a global leader in the development, construction, and operation of offshore wind farms. In the United States, Orsted is actively working to build and bring online more than 15,000 megawatts of new offshore wind generating capacity by 2030. This effort will require Orsted to obtain separate OCS air permits pursuant to 40 C.F.R. Part 55 for the construction and operation of several new wind projects off the eastern seaboard.

One OCS air issue of great importance pertains to whether and how the NSR permitting requirements should apply to pull-ahead anchor cable-laying vessels (CLVs) in the development of wind farm projects on the OCS. Orsted and other offshore wind developers must use the CLVs to install offshore electric transmission cables connecting these new offshore wind farms on the OCS to landfall locations where the cables connect to onshore substations and related infrastructure. Needless to say, this is a complicated issue of first impression for which Orsted is seeking the policy and regulatory guidance of EPA headquarters. Over the last year or so, our efforts have included extensive consultation with both EPA headquarters and Region 1, who is now reviewing Orsted's air OCS permit for the South Fork Wind Farm off the east coast. Notably, we had extensive discussions last fall with your staff at OAQPS in RTP North Carolina (including Raj Rao, Juan Santiago, and Jessica Montanez), which included a lengthy 2-hour EPA teleconference call with your staff from OAQPS, various EPA Regions, and OGC. I am attaching hereto for your reference a detailed regulatory analysis that we submitted early last fall to EPA on these key air OCS permitting issues. There are other written materials addressing this issue that we have shared with EPA staff, including a PowerPoint presentation used for the teleconference that we can make available to you as appropriate.

We believe EPA guidance on the CLV air permitting issue is necessary to assure consistency among the EPA regions and expedite the issuance of OCS NSR permits for offshore wind projects along the Atlantic seaboard. In the case of Orsted alone, we are now in the process of developing offshore wind farms for South Fork Wind, Ocean Wind, Revolution Wind, Sunrise Wind, and Skipjack Wind. As a next step, I would like to suggest scheduling a brief telephone call with at least Tomas so that we can informally discuss the process that EPA will use to move forward with this air permitting matter. We understand that there are many important air policy and regulatory issues demanding your time and attention during this initial transition period for the Biden EPA. While wanting to be respectful of those many competing demands and priorities, we believe that this air OCS permitting issue – while complicated and somewhat in the weeds – is an important permitting matter that must be resolved in order to accelerate the deployment of large amounts of offshore wind projects necessary for achieving the ambitious clean energy goals of the Biden Administration.

I hope that all is going well with your transition into EPA. It is obviously a huge undertaking and responsibility. I look forward to hearing back from you about potential times for a discussion. We are relatively free later this week and early next week for a call.
Best,
Stephen

**Stephen C. Fotis | Partner**

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September 30, 2020

Anne L. Austin
Principal Deputy Assistant Administrator
Office of Air and Radiation
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue N.W.
Mail Code 6101A
Washington, D.C. 20460

**RE: TREATMENT OF OFFSHORE CABLE-LAYING VESSEL ACTIVITIES UNDER THE 40 C.F.R. PART 55, OUTER CONTINENTAL SHELF AIR REGULATIONS**

Dear Ms. Austin:

On behalf of Orsted Wind Power North America LLC (Orsted), we are requesting guidance from the Environmental Protection Agency (EPA or Agency) regarding the permitting of offshore wind energy projects that Orsted is currently developing in the Outer Continental Shelf (OCS). Orsted is a global leader in the development, construction, and operation of offshore wind farms. In the United States, Orsted is actively working to build and bring online more than 15,000 megawatts of new offshore wind generating capacity by 2030. This effort will require Orsted to obtain separate air permits pursuant to 40 C.F.R. Part 55 for the construction and operation of several new wind projects off the eastern seaboard.

As discussed briefly below and in more detail in the attached analysis, this request arises from an issue raised in discussions for a project with Region 1: whether and how the OCS New Source Review (NSR) permitting requirements (OCS NSR permits) should apply to pull-ahead anchor cable-laying vessels (CLVs). Orsted expects other of its projects—both within Region 1 and in Regions 2 and 3—will submit notices of intent or OCS NSR air permit applications within the next year. CLVs will be used to install offshore electric transmission cables (export cables) connecting these new offshore wind farms on the OCS to landfall locations where the cables connect to onshore substations and related infrastructure. Our analysis specifically focuses on CLV activities conducted by those vessels utilizing anchors for propulsion, as the Agency has already determined that CLVs using a dynamic positioning system (computer-controlled thrusters rather than anchors) are not OCS sources.

Attached for your review is an analysis that Orsted has prepared on the statutory and regulatory provisions relevant to the OCS NSR permitting issues, as well as administrative and judicial precedent interpreting these provisions. Based on our detailed review of these issues in the attached analysis, we seek confirmation or clarification on the following points:

- Transmission cable-laying activities conducted by CLVs utilizing anchors for propulsion should not be regulated as an OCS source and treated as "stationary source" activities because the CLVs do not meet the specific applicability criteria for regulating those vessels as an OCS source under the Clean Air Act and the implementing regulations at 40 C.F.R. Part 55. As explained in the attached analysis, CLVs utilizing anchors for propulsion fail to meet the OCS source definition criteria that a vessel be (1) "permanently or temporarily attached to the seabed;" (2) "erected thereon;" and (3) "used for the purpose of exploring, developing, or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. §1331 et seq.)."[1] These vessels are in continual motion and use pull-ahead anchors for propulsion purposes, not for staying fixed in one place or being continuously attached to the sea floor for any meaningful time period.

- Even if such CLV activities were subject to OCS NSR regulation, those vessel activities—which can stretch for many dozens of miles along a linear route—should be aggregated with the primary OCS source activities for the development of the wind farm. Those primary OCS source activities consist of the construction and operation of the offshore Wind Turbine Generators (WTGs) and other related offshore activities in the Wind Development Area (WDA).[2]

- Consequently, for purposes of modelling and for determining the potential to emit, the geographic boundaries should be limited to 25 miles of the centroid of the WDA. This geographic limitation is required by current EPA policy for defining the boundaries of a "stationary source" under the federal NSR program.

A consistent national approach that correctly applies the relevant statutory and regulatory requirements to cable laying activities in the OCS would assure consistency among the EPA regions and expedite the issuance of OCS NSR permits for other offshore wind projects along the Atlantic seaboard, including Ocean Wind, Revolution Wind, Sunrise Wind, and Skipjack Wind now being developed by Orsted.

[1] *See* Section 328(a)(4)(C) of the Clean Air Act, 42 U.S.C. § 7627; 40 C.F.R § 55.2.
[2] The WDA generally consists of the leased area of federal OCS waters where the WTGs for the particular wind project will be installed and operated.

We look forward to discussing this issue with you and your staff and answering any questions.

Sincerely,

Stephen C. Fotis

Stephen C. Fotis
Counsel for Orsted Wind Power North America LLC

CC: Karl Moor
Kelley Raymond
David Harlow
Greg Dain

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# TREATMENT OF CABLE-LAYING VESSEL ACTIVITIES ON THE OCS UNDER 40 C.F.R. PART 55, OUTER CONTINENTAL SHELF AIR REGULATIONS

## EXECUTIVE SUMMARY

Orsted has been working with Region 1 in advance of submitting an Outer Continental Shelf (OCS) New Source Review (NSR) permit for South Fork Wind, which will be located on the OCS off the coasts of Rhode Island and Massachusetts. One important issue raised by Region 1 pertains to when and how the OCS air regulations under 40 C.F.R Part 55 should apply to cable-laying vessels (CLVs) installing the offshore export cables that will transmit the electricity generated by these new offshore wind farms to onshore substations and related infrastructure.

Orsted is proposing to use CLVs that move along portions of the designated cable route by a series of winches and anchors when the use of the dynamic positioning system (DPS) is not feasible.[1] Tugboats place anchors along the cable route ahead of the CLV, and winches on the CLV pull in the anchor, moving the vessel forward. This provides sufficient forward momentum (while minimizing lateral drift) for the vessel to pull a jet plow or similar cable burial device. When engaged in cable-laying activity, the vessels are not stationary but instead lay and bury cable behind the vessel at a rate of about two miles per day.[2]

The focus of this inquiry has been on only those CLV activities conducted by vessels utilizing anchors for propulsion. The Agency already has determined that CLVs are not OCS sources for NSR purposes in those cases when these vessels are using a DPS (a computer-controlled system of thrusters with no anchors) to advance and maintain lateral position along the export cable route.[3] While CLVs can, and frequently do, use DPS, seafloor conditions and water depth may necessitate the use of pull-ahead anchors to

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[1] A dynamic positioning system uses computer-controlled thrusters to maintain position along the cable route, and the ship's forward momentum comes from its own on-board propulsion, not winches and anchors. At the time of permit application submittal, it is difficult to know with precision the portions of the route for which Orsted can use a DPS instead of a vessel using pull ahead anchors. To take a conservative approach that will ensure maximum operational flexibility, Orsted is proposing in its OCS NSR permit applications that the anchors will be regularly used for propulsion purposes to help the vessel pull cable-laying equipment (such as a jet plow) along the export cable-laying route.

[2] CLVs are distinct and different from the jack-up vessels that are used to install foundations and structures for supporting the WTGs and associated wind farm equipment. As a general matter, these jack-up vessels (whether self-propelled or not) have retractable metal legs with spud cans that attach to the seafloor. The metal legs, along with a mechanical lifting system, enable the vessel to lower its legs into the seabed and elevate its hull to provide a stable work deck. In a prior OCS NSR permit for the construction and operation of another wind farm project, EPA has determined that a jack-up vessel becomes an OCS source when at least three legs have attached to seafloor and ceases to be an OCS source when the vessel retracts enough of its legs from the seafloor so that fewer than three legs remain attached to the seafloor. *See Outer Continental Shelf Air Permit for the Cape Wind Energy Project*, OCS-R1-01 at 4 (2011) (definitions of OCS Attachment and OCS Detachment).

[3] EPA Memorandum, *Source Determination Analysis for Vineyard Wind OCS Windfarm* at 9 (June 26, 2019) (Vineyard Wind OCS Guidance).

provide additional propulsion for pulling the cable laying equipment behind the vessel.[4] In this instance, the Region also has preliminarily treated CLVs using pull-ahead anchors as OCS sources, but Orsted understands EPA is still examining how these vessels should be treated as a general matter under the OCS NSR program.

The following analysis concludes that CLV activities are not the type of stationary-source activities that should be regulated as an "OCS source" under 40 C.F.R. Part 55 because these vessels do not meet all of the required elements that are set forth in the regulatory definition of "OCS source" at 40 C.F.R. § 55.2.

According to the regulations, an OCS source "means any equipment, activity, or facility which: (1) Emits or has the potential to emit any air pollutant; (2) Is regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. § 1331 et seq.); and (3) Is located on the OCS or in or on waters above the OCS."[5] The definition "shall only include vessels when" they meet one of following two eligibility conditions:

- The vessel is "[p]ermanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. § 1331 et seq.);" or

- The vessel is "[p]hysically attached to an OCS source, in which case only the stationary source aspects of the vessels will be regulated."[6]

The CLV activities at issue here do not meet the requirements noted above for OCS regulation. In particular, the CLVs never become "permanently or temporarily attached to the seabed," and are not erected on the seabed.[7] This conclusion is confirmed not only by the interpretation of those terms not just in EPA's preamble discussions to the Part 55 OCS regulations, but also by numerous rulings of EPA's Environmental Appeals Board, U.S. Customs and Border Protection, and various federal court decisions regarding the limitations placed on the regulation of OCS sources under the Clean Air Act (CAA or Act) and the Outer Continental Shelf Lands Act (OCSLA).

The function and nature of CLV activities are more akin to mobile sources than stationary sources. Notably, EPA has expressly recognized that activities exempted from Part 55 OCS regulation include those activities where vessels are traveling "en route to or from an OCS source" and those "non-stationary source activities while at dockside" at the OCS source.[8] Because these CLVs are in perpetual motion and use pull-ahead anchors as a

[4] Such equipment includes a mechanical cutter, mechanical plow, and jet plow.
[5] 40 C.F.R. §55.2.
[6] *Id.*
[7] *See* Section 328(a)((4)(C) of the Clean Air Act, 42 U.S.C. § 7627; 40 C.F.R § 55.2. In addition, if EPA insists upon treating CLVs as separate and distinct OCS sources, CLVs would also fail to meet the third criterion of being used for the purpose of exploring, developing or producing resources therefrom within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. §1331 *et seq.*)."
[8] Outer Continental Shelf Air Regulations, 57 Fed. Reg. 40,792, 40,794 (Sept. 4, 1992).

propulsion method and not to fix the vessels at one specific location, they do not meet the condition of attachment as required by the EPA regulations.

Likewise, these CLV activities fail to meet the condition that vessel must be "erected thereon" for the purpose of OCS exploration, development or resource production. To be erected thereon, the Environmental Appeals Board (EAB) has determined that a vessel must be attached to the seabed and sufficiently secure and stable to commence operations. Mere attachment is not sufficient. These are characteristics deemed critical by the EAB when assessing whether it is appropriate to regulate a vessel's activities as part of the OCS source and subject to NSR permitting requirements.[9]

Finally, in the event that the CLV activities were ever determined to meet all of the applicability criteria noted above for an OCS source (which is not the case), the analysis below presents the reasons why EPA would be required to aggregate the CLV activity with the other emitting elements of the wind farm. As a result, EPA should limit the geographic scope of the OCS source to only those CLV activities occurring within 25 miles of the centroid. The obligation to limit the geographic scope not only makes good practical sense, but also is required by current EPA regulations and policy for defining the boundaries of a "stationary source" under the federal NSR program.[10]

## CABLE-LAYING VESSELS ARE NOT AN OCS SOURCE BECAUSE THE VESSEL DOES NOT ATTACH TO THE SEABED AND IS NOT ERECTED THEREON

The Part 55 OCS regulations, which implement Section 328 of the CAA, establish detailed rules for determining which offshore sources and vessel emissions activities are subject to the NSR permitting requirements.[11] Among other things,[12] the definition of "OCS source" at 40 C.F.R. § 55.2 includes only those vessels that meet one of the following two eligibility conditions. The first is that the vessel is "[p]ermanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. §1331 et

[9] Furthermore, the analysis below demonstrates that CLV activities—if treated as a separate and distinct source—would also fail to meet the condition that the vessel is being used for exploration, development, or production of resources on the OCS. Most importantly, the purpose of CLV activities is to install offshore export cable on the seabed. This activity is fundamentally different from the activities of the primary OCS source—namely the generation of electricity by the operation of offshore WTGs and other associated activities in the WDA. As discussed below, the only way CLV activities can be characterized as performing a "resource development" function is if they are treated as a support facility for the WTGs and other activities that comprise the OCS source.

[10] Vineyard Wind OCS Guidance at 9-12.

[11] *See* 40 C.F.R. § 55.3 (establishing the applicability rules).

[12] The federal regulations at 40 C.F.R. § 55.2 also define an OCS source to include any equipment, activity, or facility that (1) emits or has the potential to emit any air pollutant; (2) is regulated or authorized under the OCSLA (43 U.S.C. § 1331 *et seq.*); and (3) is located on the OCS or in or on waters above the OCS. These three requirements are identical to the three criteria for defining an OCS source under section 328(a)(4)(C) of the Clean Air Act.

seq.)."[13] The second is that the vessel is "[p]hysically attached to an OCS source, in which case only the stationary source aspects of the vessels will be regulated."[14]

The CLV does not meet the second eligibility condition stated above. The vessel is used to lay submarine electric cable between the offshore substations and from those substations to the landfall location near the onshore substation. The CLV never physically attaches to an OCS source (*e.g.*, jack-up vessels of substation with diesel generator). The cable has no potential to emit and thus cannot be an OCS source.

With respect to whether offshore CLV activities satisfy the first eligibility condition, Region 1 views the two terms—"attached to the seabed" and "erected thereon"—as synonymous or interchangeable. The following is a brief analysis of the many reasons why it is not appropriate for EPA to determine that the CLVs that use anchors for propulsion meet this first eligibility condition. It also demonstrates how the two requirements—attached and erected thereon—are not interchangeable and instead are separate, independent requirements.

As discussed below, this interpretation is confirmed by the well-established cannon of statutory construction that requires full effect be given to every clause or word of the statute or regulation. In addition, it is confirmed by Part 55 preamble statements reflecting EPA's intent to exclude from regulation "non-stationary source activities." Finally, it is confirmed by rulings of the EAB, U.S. Customs and Border Protection (CBP) of the Department of Homeland Security, and various federal court decisions regarding the limitations placed on the regulation of OCS sources under the CAA and the OCSLA.

CAA/OCSLA Statutory Construction: Courts aim "to give effect, if possible, to every clause and word of a statute."[15] Courts are thus "reluctan[t] to treat statutory terms as surplusage" in any setting.[16] The case against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.[17]

In evaluating section 4(a)(1) of OCSLA (43 U.S.C. § 1331 et seq.) as incorporated by the CAA, courts would interpret Congress' intent for "attached to" and "erected thereon" to serve as independent requirements based on the surplusage canon. The definition of "erected" implies fixedness in position—befitting of a stationary source—and EPA should not gloss over it.[18] Every clause and word of the OCSLA and CAA are to have

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[13] 40 C.F.R. § 55.2.
[14] *Id.*
[15] *United States v. Menasche*, 348 U.S. 528, 538-539 (1955) (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)).
[16] *Babbit v. Sweet Home Chapter, Communities for Great Ore.*, 515 U.S. 687, 698 (1995).
[17] *Marx v. General Revenue Corp.*, 568 U.S. 371, 386 (2013); *see also Appalachian Power Co. v. EPA*, 135 F.3d 791, 819 (1979) (refraining from interpreting CAA in a way that creates surplusage in the context of interpreting compliance deadlines for $NO_x$ emissions under the Acid Rain Program); *Motor and Equipment Mfrs. Ass'n, Inc. v. EPA*, 627 F.2d 1095, 1107 (1979) (interpreting EPA's waiver authority related to in-use maintenance of motor vehicles); *Demette v. Falcon Drilling Co., Inc.*, 280 F.3d 492, 498 n. 19 (5th Cir. 2002) (determining that certain jack-up vessels can be considered OCSLA-regulated sources).
[18] *See* Merriam Webster Dictionary ("[T]o fix in an upright position …").

effect; to ascribe the same meaning of "attached to" as "erected upon" would deem the corresponding phrase superfluous, void, or insignificant. And as in instances where the case against surplusage is strongest, which is where an interpretation would render superfluous another part of the same statutory scheme, so would treating "attached to" the same as "erected thereon" render superfluous the other phrase as the two requirements are in the same statutory scheme—the definition of an OCS source under the OCSLA, as incorporated by the CAA. Courts have upheld cases against surplusage under the statutes at issue here, the OCSLA and the CAA, so courts would likely apply a case against surplusage in this situation and find "attached to" and "erected thereon" to have separate, different, independent meanings in the statutory scheme.

Part 55 Preamble Statements: EPA's preamble to the final Part 55 OCS regulations makes it clear that "only the vessel's stationary source activities may be regulated" and "when vessels are in transit, they are specifically excluded from the definition of OCS source by statute."[19] In support of this interpretation of the CAA, EPA cites to legal precedent confirming that "only the stationary source activities of vessels at dockside will regulated under title I of the Act (which contains NSR and [Prevention of Significant Deterioration (PSD)] requirements), since EPA is prohibited from directly regulating mobile sources under that title."[20] This point is further underscored by EPA's preamble statement that "Section 328 [of the CAA] does not provide authority to EPA to regulate the emissions from engines being used for propulsion of vessels" under Title II of the CAA.[21] Such activities that are exempted from Part 55 OCS regulation include those activities where vessels are traveling "en route to or from an OCS source" and those "non-stationary source activities while at dockside" at the OCS source.[22]

Viewed in light of these preamble statements, a strong factual case can be made for characterizing the activities undertaken by CLVs as mobile (*i.e.*, non-stationary) sources that should not be subject to Part 55 OCS regulation. As described above in the previous section, both the function and activities of CLVs are akin to those of mobile sources. The anchors of CLVs are not used for affixing the vessel in one particular place like an oil and gas drill ship or other vessel that anchors to the seabed to establish a secure and tight connection to prevent movement from a specific location. Rather, the anchors are used to pull CLVs forward along the export cable route at a rate of up to two miles per day. In effect, the vessels are using the anchors for propulsion purposes and to maintain position along a linear route. This function is characteristic of mobile sources in transit, rather than stationary sources attached at one fixed location on the seabed.[23] The CLVs may be moving slowly, but they are always mobile.

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[19] Outer Continental Shelf Air Regulations, 57 Fed. Reg. 40,792, 40,793 (Sept. 4, 1992).
[20] 57 Fed. Reg. at 40,793-94 (citing *NRDC v. EPA*, 725 F.2d 761 (D.C. Cir. 1984)).
[21] *Id.* at 40,794.
[22] *Id.*
[23] The amount of time that a project may need to use pull-ahead anchoring will depend on water depth, seafloor characteristics, and other site-specific factors. If the vessel can pull the cable laying equipment using DPS alone, anchor pulling may not be needed at all. For other projects, it may be appropriate to use only anchor pulling or some combination of DPS and anchor pulling, with the proportion of anchor-pulling use determined by site-specific conditions and vessel capabilities.

EAB Decisions on "Attached to" Criterion: The preceding interpretation of the statute and regulations is consistent with several EAB decisions on the meaning of the phrase "attached to the seabed." In a 2010 decision involving drill ship activities for the exploration of oil in the Chukchi and Beaufort Seas,[24] the EAB generally affirmed the EPA Region's determination that a drill ship used for oil exploration "does not become an OCS source until it is sufficiently secure and stable in a position to commence exploratory activities."[25] Under this interpretation, attachment to the seabed only occurs once the drill ship "is attached by an anchor to the seabed at a drill site" so that the drill ship is fixed "at the location for the purpose of exploring, developing, or producing resources from the seabed and its activities are more closely aligned with the activities of a stationary source than of a vessel transiting the sea."[26]

In a subsequent EAB decision in 2011, also involving Shell Gulf of Mexico, Inc. and Shell Offshore Inc.'s (collectively, Shell) same offshore exploratory activities, the EAB further clarified that—

> The purpose of "attachment" within the definition of "OCS source" in 40 C.F.R. § 55.2 is to prevent or minimize relative movement between two vessels, between a vessel and a dock structure, or between a vessel and the seabed.[27]

The EAB based its interpretation, in part, on the plain meaning of the regulatory term "attached to," which is defined in the dictionary to mean "to make fast," "firmly fix," "fasten," "secure," or "join."[28] Another important factor in support of this conclusion was the "intermittent and insubstantial" physical connections between the drill ship and icebreaker vessel at issue in this case.[29] Based on this factor, the EAB concluded that the anchor cable, which is repeatedly connected and disconnected from one of the drill ship's anchors, is not intended in any way to restrict the location of the icebreaker vessel. Rather, the anchor cable will be played out as the icebreaker travels away from the drill ship so that the icebreaker is merely transporting the anchor and the end of the anchor cable to the designated anchor site. The EAB agreed with EPA that this does not constitute "attachment" as that term used in the definition of OCS source.[30]

Although the EAB did not define with precision when a vessel becomes attached to the seabed (or an OCS source), these two decisions clearly establish several minimal federal requirements for making an affirmative determination on attachment. First, the vessel must

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[24] *See In re Shell Gulf of Mex., Inc.*, 15 E.A.D. 103 (E.A.B. 2010) (*Shell 2010*), *order on motions for reconsideration and clarification* (E.A.B. 2011).
[25] 15 E.A.D. at 135.
[26] *Id.* at 134, 137.
[27] *In re Shell Gulf of Mex., Inc.*, 15 E.A.D. 193, 200 (E.A.B. 2011) (citing 57 Fed. Reg. at 40,793-94 (referencing activities of vessels while "at dockside")).
[28] *Id.* at 199 (citations omitted).
[29] *See id.* at 201.
[30] *Id.* at 200-01.

be attached by an anchor to the seabed at a location for the purpose of exploring, developing, or producing resources from the seabed—such as placing the anchor at a drill site. Second, attachment does not simply mean "any physical connection between" the vessel and the seabed. Rather, the connection must be substantial and last for an extended time period.[31] And third, the vessel's activities (once the requisite connection to the seabed has occurred) must be more closely aligned with the activities of a stationary source than a vessel that is moving from one location to another.[32]

As noted above, CLV activities fail to satisfy the necessary factors leading to an affirmative determination on attachment. First, the anchors of CLVs are not used for affixing the vessel in one place like a drill ship or other vessel that anchors to the seabed to establish a secure and tight connection. In fact, the vessels are continually redeploying the anchor ahead of the vessel along the export cable route. Second, the anchors are only used in order to assist during cable burial operations at those times when the nature of the seafloor and water depth require more pulling force than the ship's thrusters could provide alone. As noted above, the exact amount of time that the anchors are used will depend on the site-specific conditions and a variety of circumstances that the vessel may encounter in laying the electric cable. And third, as noted above, CLVs operate more like mobile sources than stationary sources.

EAB Decisions on "Erected Thereon" Criterion: The EAB has determined on several occasions that the "erected thereon" criterion is not synonymous with the "attached to" criterion, but rather imposes a separate and distinct requirement. The first time was the 2010 EAB decision on Shell's offshore exploratory activities discussed above. While rejecting the Region's overly subjective test for determining when a vessel is "attached to the seabed and erected thereon,"[33] the EAB generally agreed with the Region's interpretation of what types of OCS activities satisfy these regulatory requirements. In the case of "erected thereon," this criterion was interpreted to mean that a vessel is attached to the seabed and "sufficiently secure and stable to commence operations," such as when a drill ship is attached at a fixed location and begins to drill into the seabed for the exploration or production of oil.[34] "Erected thereon" therefore requires the vessel to be securely attached to the seabed and relatively immobile.

The EAB provided further guidance on the meaning of "erected thereon" in a related case involving Shell's offshore exploratory activities in 2012.[35] In this subsequent case, the EAB affirmed as "a cogent, well-reasoned analysis of the statutory and regulatory requirements for an OCS source,"[36] the interpretation that the "erected thereon" criterion "is 'intended to reflect the process by which a vessel becomes attached to the seabed and used thereafter for the purpose of exploring, developing, or producing resources from the

[31] *See id.*
[32] *See Shell 2010*, 15 E.A.D. at 133-43.
[33] *See id.* at 143-48.
[34] *See id.* at 135-43.
[35] *See In re Shell Gulf of Mexico, Inc.*, 15 E.A.D. 470 (E.A.B. 2012) (*Shell 2012*).
[36] *Id.* at 493.

seabed.'"[37] In support of this conclusion, the EAB relied on the plain meaning of the verb "to erect," explaining that—

> its customary meaning "to construct" or "to build" suggests that the activity be carried out to a plan or specification, and that requiring the attachment to the seabed occur at the location where the OCS activity is reasonably expected to occur, *i.e.*, at the drill site, ensures that attachment to the seabed is related to engaging in the systematic and planned activity as an OCS source, and not for other purposes such as waiting out a storm or anchoring in a harbor to get supplies.[38]

Based on this interpretation of the regulation, the EAB concluded that merely attaching to the seabed is a necessary, but not sufficient, condition for classifying a drill ship as an OCS source under 40 C.F.R. § 55.2. In particular, the EAB determined that the vessel must also meet the "erected thereon" criterion, which requires that the vessel be "attached to the seabed *at a drill site* where it can reasonably be *expected to conduct OCS activities*"—namely those activities *directly related* to exploring, developing, or producing resources.[39]

Notably, in reaching this conclusion, the EAB emphasized the importance of the vessel's attachment to the seabed being in close proximity to where the applicant plans to undertake the activities as an OCS source. According to the EAB, the failure to impose this geographic limitation would "lead to absurd results" of classifying as a OCS source a drill ship that anchors "literally hundreds of miles away from the drill site where OCS activity will occur."[40] Based on this interpretation of the "erected thereon" criterion, there needs to be close geographic correspondence between the location where the vessel attaches to the seabed and the location where an authorization has been provided to conduct the OCS activity—whether that activity is the production of oil or the renewable generation of electricity.

Applying this guidance to the development of offshore wind farms in the OCS, it is clear that the CLVs do not meet these requirements for "erected thereon." One important factor in support of this conclusion is that the CLVs are not located and erected upon the seabed at the specific site of where the OCS activities are authorized to take place—namely the area where WTGs are located and generating electricity. Rather, the vessels are simply laying cable along a route from the WTGs to the landfall location near the onshore substation. As a result, a CLV will be attaching its anchors many miles away from the

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[37] *Id.* at 491 (quoting Supplemental Statement of Basis for Proposed OCS PSD Permits, *Noble Discoverer* Drillship, at 23 (July 6, 2011) (Supplemental Statement).
[38] *Id.* at 491 (citing Supplemental Statement at 24 and dictionary definitions of "to erect").
[39] *Id.* at 491 (emphasis added).
[40] *Id.* at 491-92. This interpretation is also consistent with the requirements for calculating the "potential to emit" of the OCS source. In particular, the OCS regulations include the emissions of vessels servicing or associated with an OCS source only "while at the source and while enroute to or from the source within 25 miles of the source." 40 C.F.R. §55.2 (definition of potential emissions).

center point of the wind farm. In the case of South Fork Wind, this distance will likely range up to 60 miles from the center of the wind farm as the CLV travels from the WTGs to the offshore substations and then onto the onshore substation; future projects could see even longer distances. Based on these considerations, it is clear that the CLVs will not be functionally operating as a fixed structure erected upon the seabed—such as when a drill ship attaches to the seabed and operates as a stationary source for the exploration or production of oil. Nor will these vessels be fixed in one location like the jack-up vessels or the offshore substations.

CBP Rulings: The CBP also has issued numerous rulings confirming that OCS vessel activities, similar to those of CLVs used for developing offshore wind farms, are not subject to the coastwise custom and navigation laws[41] under the OCSLA.[42] These CBP rulings further bolster the conclusion that such CLVs also do not meet the same OCSLA requirement contained in the OCS source definition.

In the case of those vessels using DPS, the CBP has repeatedly ruled that such vessels do not meet the requirements of OCSLA section 4(a)(1) and thus are not regulated by the coastwise custom and navigation laws.[43] The CBP's rationale for its rulings was that DPS vessels lack "any permanent or temporary attachment to the seabed" and, without such actual physical attachment, the vessel cannot be classified as "a coastwise point" subject to U.S. laws, as required by OCSLA section 4(a)(1).[44] In addition, the CBP has ruled that a vessel is not attached to the seabed when the vessel is "connected temporarily to the piles by a winch" and "used solely for pipe laying purposes and not for the purpose of 'exploring for, developing, or producing resources' from the OCS" for purposes of the OCSLA.[45] The CLVs are connected to the anchors by a pull-ahead winch, and the logic for pipe laying applies equally to the laying of transmission cable on the seafloor.

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[41] Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Title 46 of the United States Code covers the coastwise laws, including the Jones Act, that are administered by CBP.

[42] The OCSLA provision of most relevance in this case is section 4(a)(1), which extends all U.S. laws (including the coastwise custom and navigation laws) to those "installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom." 43 U.S.C. § 1333(a)(1).

[43] *See* Customs Letter Ruling HQ H012082 (Aug. 27, 2007) (recognizing long-standing precedent that dynamically positioned vessels on the installation location of piles is not subject to coastwise regulations under OCSLA); Customs Letter Ruling HQ 115134 (Sept. 27, 2000) (ruling that floating offshore service facility is not subject to customs and navigation laws pursuant to OCSLA insofar as "onboard vessel propulsion system," rather than anchoring was used to maintain the vessel's position next to the drilling unit); Customs Letter Ruling HQ 113838 (Feb. 25, 1997) (ruling that custom and navigation laws do not apply to a saturation diving vessel that maintains its position with a DP system without the use of anchors); Customs Letter Ruling HQ 109576 (July 12, 1988) (ruling that vessel is not attaching to the seabed in cases where the vessel maintains its position by a DP system).

[44] *See* Customs Letter Ruling HQ H012082.

[45] Customs Letter Ruling HQ 115799 (Sept. 30, 2002). *See also* Customs Letter Ruling HQ 115531 (Dec. 3, 2001) (ruling that customs and navigation laws do not apply under OCSLA to a dynamically positioned vessel that is hooked to concrete pads on the seabed during the installation of those concrete pads); Customs Letter Ruling HQ 111126 (Aug. 16, 1990) (ruling that a vessel is attached to the seabed by moving the anchors of other vessels).

These CBP rulings further underscore that it is appropriate for EPA to determine here that CLVs do not meet the "attached to" criterion for classifying a vessel as an OCS source under the Part 55 OCS regulations.

Federal Court Decisions: Courts have found that section 4(a)(1) of OCSLA does not regulate drill ship vessels that are not attached to the sea floor and erected thereon. One example is *Cunningham v. Offshore Specialty Fabricators, Inc.*,[46] in which a federal district court found that the drill ship was not erected on the seabed because the deployed anchors did not sufficiently attach the vessel in order to render it an OCS source.[47] The court specifically compared the drill ship's activities to other cases regarding the use of anchors, such as when a vessel drops eight large anchors to stabilize its position but is not actually erected on the OCS, and when a tender vessel is anchored to the seabed but not erected on the OCS like a jack-up rig.[48]

In *Global Industries Offshore LLC v. Pipeliners Local Union 798*, a federal district court in Louisiana considered the applicability of OCSLA section 4(a)(1) to a dispute stemming from a construction project consisting of 90 miles of pipeline laid in the Gulf of Mexico.[49] The process involved welding individual pieces of pipe into one continuous pipeline as it was lowered into the Gulf of Mexico while a derrick barge was stationary with tension machines holding the pipeline off the back of the vessel.[50] The court determined that the derrick barge did not utilize a traditional anchor system but rather positioned itself using a DPS and was attached to the seabed through a "suction pile."[51] In interpreting OCSLA section 4(a)(1), the court deferred to CBP rulings providing that DPS vessels operating on the OCS for pipe laying purposes do not fall under the provisions of the OCSLA, finding that OCSLA section 4(a)(1) did not apply to the time period that the derrick barge was installing pipeline on the OCS.[52]

CLVs used for offshore wind projects are very similar to the cases of *Cunningham* and *Global Industries Offshore*. Like in *Cunningham*, where the mere fact that a vessel was anchored to the seafloor did not give rise to a determination that the vessel achieved OCS

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[46] No. 5:04-CV-282, 2010 WL 11628021, at **2-5 (E.D. Tex. Aug. 17, 2010).
[47] *Id.* at *7; *see Demette v. Falcon Drilling Co.*, 280 F.3d 492, 496 (5th Cir. 2002) (OCSLA applied to an oil rig attached to the seabed and erected on the OCS for the purpose of drilling for oil because the rig was stationary and jacked up over the OCS), *overruled on other grounds by Grand Isle Shipyard, Inc. v. Seacor Marine, LLC*, 589 F.3d 778 (5th Cir. 2009); *see also United States v. Kaluza*, Criminal Action No. 12-265, 2013 WL 6490341 (E.D. La. Dec. 10, 2013) (OSCLA applied to *Deepwater Horizon* because the rig was attached to the seabed through a physical drill pipe and erected on the OCS as an installation necessary for the removal of oil), *aff'd in part*, 780 F.3d 647 (5th Cir. 2015).
[48] *Cunningham*, No. 5:04-CV-282, 2010 WL 11628021 at *7; *see United States v. Pickett*, 598 F.3d 231, 236-37 (5th Cir. 2010); *see Demette*, 280 F.3d at 499-500 n.28; *cf. Global Indus. Offshore LLC v. Pipeliners Local Union 798*, No. Civ.A. 04-1249, 2006 WL 724815, at **3-4 (W.D. La. Mar. 16, 2006).
[49] 2006 WL 724815 at **1-2.
[50] *Id.*
[51] *Id.* at *3. Suction piles are used as mooring anchors and foundations for anchoring large offshore installations, such as oil platforms, offshore drillings, and accommodation platforms, to the seafloor.
[52] *Id.*

source status, the occasions during which CLVs use anchors and pull-ahead winches for additional pulling power do not make the CLV an OCS source.

Furthermore, the CLV that would be used for Orsted projects is like the derrick barge used in *Global Industries Offshore*, as laying pipeline is similar to laying cable. While the derrick barge in *Global Industries Offshore* was attached to the seabed through a suction pile, the court still found that the vessel was not subject to the OCSLA. In the case of Orsted's projects, a CLV is not planned to be permanently or continuously attached to the seabed at all, other than the use of an anchor for supplying sufficient pulling force for ploughing and cable burial operations.

These court decisions further underscore that a CLV should not be considered "attached to the seabed, which may be erected thereon for the purpose of exploring, developing or producing resources" within the meaning of OCSLA section 4(a)(1), thereby precluding the classification of CLVs as a OCS source under the Part 55 regulations. Furthermore, if the CLV activities are not an OCS source, then only those emissions from CLVs while within 25 miles of the centroid of the WDA can be considered direct emissions of the OCS source when calculating the source's potential to emit.[53]

**IF A CABLE-LAYING VESSEL USING ANCHORS IS CLASSIFIED AS AN OCS SOURCE, THE BOUNDARIES OF THE SOURCE MUST BE LIMITED TO ONLY THOSE VESSEL ACTIVITIES IN CLOSE PROXIMITY OF THE WIND TURBINE GENERATORS.**

If EPA, despite the reasons described above, determines that a CLV is an OCS source subject to Part 55 regulation, the key question becomes how to define the geographic boundaries of the OCS source. One possible approach is to limit the boundaries to the primary OCS activities in the WDA, which only consist of the construction of the offshore WTGs and substations and diesel generators on the offshore substations. The other might be to extend the boundaries beyond the WDA along the full length of the export cable route in federal waters—which could stretch out well beyond 25 miles of the centroid of the WDA. This latter approach is inconsistent with the "common sense notion of a plant," as defined by EPA regulatory guidance described below.[54]

The relevant Part 55 regulations—as interpreted by the EAB and courts—require EPA to aggregate into one OCS source the CLV activities and the primary OCS source activities related to the wind farm. That policy requires the Agency to limit the geographic scope of the combined OCS source to only those CLV activities occurring within 25 miles of the centroid of the WDA or in close proximity thereto. To put in other words, EPA lacks the authority under its current aggregation policy to extend out boundaries for lengthy

[53] *See* 40 C.F.R. §55.2 (definition of potential emissions).

[54] In the case of Vineyard Wind, for which a draft permit is publicly available, EPA established two discrete OCS sources. One consists of the pollutant-emitting facilities and activities located within the WDA, which generally includes the offshore WTGs and other related facilities and activities in the WDA. The other includes the anchor-pulling CLV activities that are to be undertaken completely outside and apart from the WDA in the federal waters of Nantucket Sound with several miles of intervening ocean within the jurisdiction of the State. Vineyard Wind OCS Guidance at 9. EPA Region 1 is evaluating whether or not to follow the Vineyard Wind permitting decision in the upcoming permitting of other projects.

distances beyond the centroid of the WDA, as reflected in the hypothetical illustration provided in Attachment A. As reflected in the attached illustration, the OCS boundaries in some cases could extend out as far as 76 miles from the centroid of the OCS source and even require the expansion of the OCS source along the length of multiple export routes in the case of those offshore wind projects having more than one export cable route.

Requirement to Aggregate. Even if the EPA could find that a CLV meets the "attached to" and "erected thereon" criteria (which is doubtful based on the many reasons discussed above), a CLV clearly cannot meet the last criterion—"used for the purpose of exploring, developing, or producing resources" from the seabed"[55]—when it is evaluated as a separate and distinct standalone source. Therefore, EPA must aggregate CLV activities with the other primary construction source activities in the WDA.

First, as discussed above, the function and design of a CLV is to install offshore electric transmission cable on the seabed.[56] This activity, particularly when evaluated on its own, is different from the activities of the primary OCS source—namely the generation of electricity by the operation of offshore WTGs and other associated activities in the WDA. Wind electric generation and bulk power transmission and control have different North American Industry Classification System (NAICS) Codes (221115 and 221121, respectively).

In order for EPA to make an affirmative finding that the CLV is being used for the purpose of developing or producing resources in the OCS, the Agency must link or combine the supporting activities of the CLV with the primary OCS source activities related to the construction of the WTGs and substations in the WDA. Making this linkage, in effect, results in the aggregation of CLV activities with WTGs and other energy-producing activities in the WDA. By contrast, treating the CLV activities as a separate standalone source means, by definition, the CLV activities themselves are just laying export cable and not exploring, developing, or producing resources in the OCS.

This conclusion is bolstered by the long-standing NSR policy for the Agency to aggregate "support facilities" with a different NAICS Code than the primary facility that is producing the principal product. In this hypothetical, the source consists of both the primary facility that "is determined by its principle product (or group of products) produced or distributed" by the facility, as well as the "support facilities" that "convey, store, or otherwise assist in the production of the principal product."[57] One notable example provided in EPA guidance

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[55] *Shell 2012*, 15 E.A.D. at 491 (citation omitted). The courts have also recognized that a vessel must satisfy all three of these requirements in order to be subject to U.S. laws under OCSLA section 4(a)(1). *See Demette*, 280 F.3d at 496 (establishing a test for when OCSLA applies).

[56] The First Circuit's decision in *Alliance to Protect Nantucket Sound v. U.S. Dept. of the Army*, 398 F.3d 105 (1st Cir. 2005), that an offshore data collection tower not used for exploration or development of resources on the OCS is properly regulated by the Army Corps of Engineers under the OCLSA is not relevant here. That case specifically interprets the language in the OCSLA with regard to the jurisdiction of the Army Corps to permit structures on the OCS as specified in 43 U.S.C. § 1333(e), which has no bearing in the current situation.

[57] *See* EPA's New Source Review Workshop Manual at A.3 (October 1990); *see also* EPA Fact Sheet for the Cape Wind Offshore Renewable Energy Project at 22 (Cape Wind Project).

is the collocation of a power plant that generates electricity and a silicon wafer and semiconductor manufacturing facility. Even though these two facilities have different NAICS Codes, current EPA policy requires that they be treated as part of the same source because "the power plant supports the primary activity of the facility" to manufacture these semiconductor wafer products.[58]

EPA has confirmed the application of this source aggregation policy in the case of the OCS NSR permit for the Cape Wind Farm. In particular, the technical support document for the draft NSR permit concluded: "Facilities that convey, store, or otherwise assist in the production of the principal product, which are called support facilities, may therefore be considered part of the same stationary source even if their own two-digit [NAICS] code would differ from the facilities involved in the primary activity."[59] EPA made this determination with respect to those support vessels involved in the construction of the windfarm at the project site, concluding that these vessel activities "are not unrelated activities, but rather components of a larger activity" and that "each vessel and each vessel attachment are **part of a single, integral project**."[60] Based on these considerations, the Agency determined that "it is reasonable to **aggregate all vessel attachments** over both space … and time" and thereby treated "all stationary source vessel activities during Cape Wind Phase I as constituting a single OCS source." [61]

The regulations expressly require that a vessel satisfy all of the OCS applicability criteria, including the criteria that the vessel be engaged in exploring, developing, or producing resources. This is the case regardless of whether there happens to be an adjacent OCS source undertaking those offshore activities. For the reasons discussed above, the regulations expressly require the CLV satisfy all of the OCS applicability requirements before that vessel can be treated as an OCS source. As a result, EPA can only find the CLV is engaged in exploring, developing, or producing resources on the OCS if it combines or aggregates the CLV activities with the WTGs and associated equipment in the WDA that are used for the production of electricity on the OCS.

Limitation on Geographic Scope. If a CLV is part of the primary OCS source, then EPA must define the geographic scope of that combined OCS source in accordance with the current federal aggregation policy for defining the boundaries of a "stationary source" under the federal NSR program. That aggregation policy bars the Agency from extending the OCS source boundaries beyond the WDA along the full length of the export cable route to the onshore substations. Rather, as discussed below, the Agency must limit the geographic scope of the combined OCS source to only those CLV activities occurring within 25 miles of the centroid of the WDA or in close proximity thereto.

When determining whether groups of emission sources are to be aggregated into one "stationary source" for air permitting purposes, EPA issued new guidance in 2019 that looks to the "common sense notion of a plant" and avoids combining or aggregating

[58] *See* EPA's New Source Review Workshop Manual at A.3.
[59] Cape Wind Project at 22.
[60] *Id.* at 22-23 (emphasis added).
[61] *Id.* at 23 (emphasis added).

pollutant-emitting activities that would not fit within the ordinary meaning of "building, structure, facility, or installation."[62] With respect to the considerations that must be undertaken in this case-by-case analysis, EPA focused its analysis on the following three factors with regard to emission sources: (1) whether they belong to the same industrial grouping; (2) are located on one or more contiguous or adjacent properties; and (3) under the common control of the same person or persons.[63]

EPA's interpretation of "adjacent" in the 2019 guidance is consistent with prior OCS source determinations as well as prior EAB decisions. Even before EPA finalized the physical proximity interpretation in the guidance discussed above, EPA relied on this type of approach in the OCS source determination for Vineyard Wind.[64] When undertaking the third step in the source determination analysis, EPA referenced the long-standing approach of disaggregating from a single source those activities that are many miles apart similar to multiple sources along a pipeline or a transmission line.[65] EPA also referenced the draft version of EPA's new guidance noted above and determined that it would apply the term "adjacent" consistent with the reasoning set forth in the draft (which was ultimately finalized unchanged).[66] In particular, EPA noted that the separation of 15 nautical miles from the closest point of the WDA would be of too great a distance to be considered in close proximity and thus included in the OCS source definition for the project. Furthermore, EPA considered that the several miles of ocean within state jurisdiction (outside the OCS) was yet another reason supporting separating out the export cable activity located in Nantucket Sound.[67]

As for whether EPA can aggregate sources separated by 60 miles or more and expand source modeling along the linear length of the export cable, there are several important considerations in defining the boundaries of the OCS source. First, there are limits on EPA's authority to extend the geographic boundaries of the source far beyond the centroid of the WDA. This limitation on EPA's authority was acknowledged by the EAB in the opinion concerning the drill ships used by Shell Offshore, Inc. in its OCS oil explorations.[68] Specifically, the EAB rejected the argument that side-by-side lease blocks constituted contiguous or adjacent property for aggregation purposes.[69] Instead, the EAB adopted a much narrower, common sense interpretation of the phrase "contiguous or adjacent properties." That interpretation does not "require[e] aggregation of emissions producing

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[62] *See* EPA, Memorandum, *Interpreting "Adjacent" for New Source Review and Title V Source Determinations in All Industries Other than Oil and Gas*, at 4 (Nov. 26, 2019) (*Interpreting "Adjacent" Guidance*) (citation omitted), available at https://www.epa.gov/sites/production/files/2019-12/documents/adjacent_guidance.pdf.

[63] *Id.* at 3. As noted earlier, wind electric generation and electric power transmission systems are not part of the same industrial grouping and have different North American Industry Classification System (NAICS) codes. Thus, the WTG and the export cable also would fail to meet the industrial grouping factor for purposes of determining whether sources are adjacent and should be aggregated as a single NSR source for permitting.

[64] *See* Vineyard Wind OCS Guidance at 10-11.

[65] *Id.* at 4.

[66] *Id.* at 9.

[67] *Id.* at 10-11.

[68] *See In re Shell Offshore, Inc.*, 13 E.A.D. 357 (EAB 2007).

[69] *Id.* at 384-85.

activities spanning hundreds of miles interspersed with vast swaths of open water that is accessible to the public would distort the ordinary meaning of 'building, structure, facility, or installation" in a manner that EPA did not intend when it promulgated the definition."[70]

Second, the EAB cited two examples that EPA provided in the preamble to the PSD rule—a pumping station along a pipeline and a coal mine connected by a 20-mile rail line to an electric generator—as circumstances where sources should not be aggregated due to the intervening distance. These examples, the EAB notes, demonstrate that where the emission units are separated by a number of miles, a continuous pipeline and rail line are not sufficient connections to be considered "contiguous or adjacent properties" within the PSD regulations.[71] The EAB observes that "contiguous or adjacent properties" must be interpreted to mean more "substantial connectedness, proximity, or continuity that would correspond to a common understanding of building, structure, facility, installation, or plant."[72]

Thus, it is physical proximity—which reflects the common sense notion of what is a stationary source—that must be considered by the Region when establishing which emission sources should be included in the stationary source for PSD permitting purposes. As a result, an OCS source should be limited to only those activities that are "close to," "next to," "not distant," or "nearby."[73] Otherwise, for multiple projects, the edge of the CLV activities could be over 60 miles from the center of the other activities in the wind farm. An indicative example is provided in Attachment A. As offshore wind projects become larger and further offshore, the distances of export cables likely will increase. EPA should not extend the geographic boundaries of the OCS source to include the CLV activities spanning long distances from, for example, the electrical service platforms in the WDA to the nearshore cable landfall location. Such an approach would be inconsistent with EPA's established approach to aggregation under the NSR program.

## CONCLUSION

The applicable statutory and regulatory OCS requirements, as well as judicial precedent interpreting these provisions, support a conclusion that CLV activities, where the vessel is using anchors for propulsion, do not meet the applicability criteria for an OCS source. As discussed above, CLVs fail to meet the applicability criteria for "attached" and "erected thereon." However, in the event that EPA were to conclude that these types of CLV activities are an OCS source (which we believe is not the case), these vessel activities should be aggregated with the primary OCS source in the WDA. Further, the Agency should limit the geographic scope of the combined OCS source under EPA's current aggregation policy. The policy requires EPA to include CLV activities only to the extent that they have physical proximity to the primary OCS source, which is limited to 25 miles from the centroid of the WDA.

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[70] *Id.* at 384.
[71] *Id.* at 385.
[72] *Id.* (internal footnote omitted).
[73] *Interpreting "Adjacent" Guidance* at 7.

ProvPort
(Construction Emission Estimates)

New Bedford
(Construction
Emission Estimates)

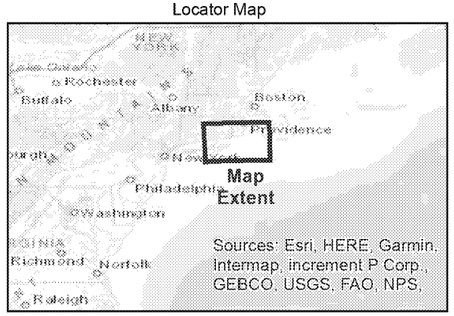
Port of New London
(Construction Emission Estimates)

Substation

Shinnecock Fish Dock, Inc.,
(Operation/Maintenance Emission Estimates)

12.2 mi.
27.8 mi.
14.5 mi.
25.9 mi.
25 mi.
43.7 mi.
61.8 mi.
76 mi.
62.1 mi.
47.5 mi. (Sparrow's Pt)
47.3 mi. (Norfolk)

Locator Map




## Legend

- Estimated Project Center
- Midpoint Between MWA Buffer/SFEC Intersection and Shinnecock Vessel East/West Route Turning Point
- Port
- 3-Nautical Mile State Waters Boundary (3.45 Statute miles)
- 25-Nautical Mile Federal Waters Boundary
- Vessel Route
- SFEC and Project OCS/Permit Area

**South Fork Export Cable (SFEC)**

- Onshore Substation
- SFEC

Source:
ESRI online map service; World Topographic Map.

N

0 9.5 19
Miles

0 10 20
Kilometers

South Fork Wind | Powered by Ørsted & Eversource

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

**South Fork Export Cable and Project OCS/Permit Area, Ports, and Vessel Routes**

JACOBS

DVR \\dc1vs01\GISProj\O\Orsted\SFWF\Maps\SFWF\2020\AirPermit\20200930_SFWF_COA_CombinedOCS.mxd mcotterb 9/30/2020 12:35:02 PM

**To:** Carbonell, Tomas[Carbonell.Tomas@epa.gov]
**Cc:** Kabanda, Thierry[Kabanda.Thierry@epa.gov]; Britt Fleming[bsf@vnf.com]
**From:** Stephen Fotis[scf@vnf.com]
**Sent:** Wed 3/17/2021 4:22:33 PM (UTC)
**Subject:** RE: Orsted - Teleconference on OCS Air Permitting Issues

Hi Tomas – Both Britt and I are available to talk today at 1 PM. I will send out a calendar notice with weblink and numbers for our call.
Thanks for making time and look forward to talking soon.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

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scf@vnf.com | vnf.com



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**From:** Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Sent:** Wednesday, March 17, 2021 11:47 AM
**To:** Stephen Fotis <scf@vnf.com>
**Cc:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>; Britt Fleming <bsf@vnf.com>
**Subject:** RE: Orsted - Teleconference on OCS Air Permitting Issues

Caution: External Email.

Hi Stephen, thanks for following up – this issue has certainly been on our radar. Do you or Britt have a brief window later today for me to provide a quick update and discuss your meeting request? I should have availability between 1-2pm and 3:20-3:45. Best,

Tomás

Tomás Carbonell
Deputy Assistant Administrator for Stationary Sources
Office of Air and Radiation
U.S. Environmental Protection Agency

---

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Tuesday, March 16, 2021 2:06 PM
**To:** Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Cc:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>; Britt Fleming <bsf@vnf.com>
**Subject:** Orsted - Teleconference on OCS Air Permitting Issues

Hi Tomas – I am just checking on status of scheduling a teleconference with you and your EPA team on the OCS air permitting issues with Orsted. Britt and I appreciate how jammed-pack your schedule must be, but we are trying to get a sense on when it might be possible to schedule a teleconference. Getting regulatory clarity on these issues is becoming increasing important for the permitting of South Fork and other offshore wind farms under development.
Thanks very much and hope all is going well with you.
Best,
Stephen

**Stephen C. Fotis | Partner**

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Message

**From:** Stephen Fotis [scf@vnf.com]
**Sent:** 2/16/2021 3:16:54 PM
**To:** Carbonell, Tomas [Carbonell.Tomas@epa.gov]
**CC:** Britt Fleming [bsf@vnf.com]
**Subject:** FW: OCS Air Permits for Offshore Wind Projects
**Attachments:** FINAL DRAFT (September 30) to EPA Letter on OCS NSR Treatment of CLVs - Complete with attachment.pdf

Hi Tomas – I am just checking in regarding our inquiry sent about a week ago. We understand how busy you must be with the transition on many high-priority air regulatory issues. However, it would be greatly appreciated if you could quickly get back to Britt and me, confirming that you have received our email and provide a general estimate on timing for having a preliminary conversation regarding the process for engaging on this OCS air permitting issue – which is very important for developing and bringing online offshore wind energy projects as expeditiously as possible.
Thanks very much and hope all is well with you.
Best,
Stephen

**Stephen C. Fotis | Partner**

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scf@vnf.com | vnf.com



**From:** Stephen Fotis
**Sent:** Tuesday, February 9, 2021 1:58 PM
**To:** 'carbonell.tomas@epa.gov' <carbonell.tomas@epa.gov>; 'arroyo.vicki@epa.gov' <arroyo.vicki@epa.gov>; 'arroyo.victoria@epa.gov' <arroyo.victoria@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>
**Subject:** OCS Air Permits for Offshore Wind Projects

Dear Tomas and Vicki – We wanted to touch base with both of you regarding an important air permitting issue that EPA needs to address for facilitating the rapid decarbonization of the electric power sector. Oddly enough, this issue pertains to the air permitting requirements that apply to the many offshore wind energy projects that are now being developed very quickly on the Outer Continental Shelf (OCS). Over the last year or so, our firm has been assisting Orsted Wind Power North America LLC (Orsted) in working through the many complicated OCS air permitting issues that may apply to such offshore windfarms under the new source review (NSR) program. For your reference, Orsted is a global leader in the development, construction, and operation of offshore wind farms. In the United States, Orsted is actively working to build and bring online more than 15,000 megawatts of new offshore wind generating capacity by 2030. This

effort will require Orsted to obtain separate OCS air permits pursuant to 40 C.F.R. Part 55 for the construction and operation of several new wind projects off the eastern seaboard.

One OCS air issue of great importance pertains to whether and how the NSR permitting requirements should apply to pull-ahead anchor cable-laying vessels (CLVs) in the development of wind farm projects on the OCS. Orsted and other offshore wind developers must use the CLVs to install offshore electric transmission cables connecting these new offshore wind farms on the OCS to landfall locations where the cables connect to onshore substations and related infrastructure. Needless to say, this is a complicated issue of first impression for which Orsted is seeking the policy and regulatory guidance of EPA headquarters. Over the last year or so, our efforts have included extensive consultation with both EPA headquarters and Region 1, who is now reviewing Orsted's air OCS permit for the South Fork Wind Farm off the east coast. Notably, we had extensive discussions last fall with your staff at OAQPS in RTP North Carolina (including Raj Rao, Juan Santiago, and Jessica Montanez), which included a lengthy 2-hour EPA teleconference call with your staff from OAQPS, various EPA Regions, and OGC. I am attaching hereto for your reference a detailed regulatory analysis that we submitted early last fall to EPA on these key air OCS permitting issues. There are other written materials addressing this issue that we have shared with EPA staff, including a PowerPoint presentation used for the teleconference that we can make available to you as appropriate.

We believe EPA guidance on the CLV air permitting issue is necessary to assure consistency among the EPA regions and expedite the issuance of OCS NSR permits for offshore wind projects along the Atlantic seaboard. In the case of Orsted alone, we are now in the process of developing offshore wind farms for South Fork Wind, Ocean Wind, Revolution Wind, Sunrise Wind, and Skipjack Wind. As a next step, I would like to suggest scheduling a brief telephone call with at least Tomas so that we can informally discuss the process that EPA will use to move forward with this air permitting matter. We understand that there are many important air policy and regulatory issues demanding your time and attention during this initial transition period for the Biden EPA. While wanting to be respectful of those many competing demands and priorities, we believe that this air OCS permitting issue – while complicated and somewhat in the weeds – is an important permitting matter that must be resolved in order to accelerate the deployment of large amounts of offshore wind projects necessary for achieving the ambitious clean energy goals of the Biden Administration.

I hope that all is going well with your transition into EPA. It is obviously a huge undertaking and responsibility. I look forward to hearing back from you about potential times for a discussion. We are relatively free later this week and early next week for a call.
Best,
Stephen

**Stephen C. Fotis | Partner**

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Message

**From**: Kabanda, Thierry [Kabanda.Thierry@epa.gov]
**Sent**: 4/7/2021 12:40:08 PM
**To**: Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Stephen Fotis [scf@vnf.com]
**CC**: Britt Fleming [bsf@vnf.com]
**Subject**: RE: Checking in

Sure thing.

**From:** Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Sent:** Tuesday, April 6, 2021 10:05 PM
**To:** Stephen Fotis <scf@vnf.com>
**Cc:** Britt Fleming <bsf@vnf.com>; Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Subject:** Re: Checking in

Hi Stephen, thanks for your note - I would be happy to check in. I think I have a window on Friday morning if that works for you.

Thierry, can you please help us schedule a brief call? Best,

Tomás

On Apr 5, 2021, at 9:20 AM, Stephen Fotis <scf@vnf.com> wrote:

Hi Tomas – I hope you had a nice Easter weekend and are doing well. When you get a moment, can you provide Britt and me with an update on Orsted. In particular, Orsted is knowing when we might be getting a response from EPA to our inquiry on the permitting cable-laying vessels under the OCS air regulations? During our last conversation, you had indicated that EPA didn't need anything further from us. Please let us know if that's still the case.
Thanks much,
Stephen

**Stephen C. Fotis | Partner**

**<image001.png>**

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scf@vnf.com | vnf.com

Appointment

**From:** Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]
**Sent:** 4/7/2021 12:44:27 PM
**To:** Carbonell, Tomas [Carbonell.Tomas@epa.gov]

**Subject:** Meeting Forward Notification: Checking In with Stephen Fotis
**Location:** Microsoft Teams Meeting

**Start:** 4/9/2021 3:45:00 PM
**End:** 4/9/2021 4:15:00 PM

**Recurrence:** (none)

## Your meeting was forwarded

Kabanda, Thierry has forwarded your meeting request to additional recipients.

Meeting

Checking In with Stephen Fotis

Meeting Time

Friday, 09 April 2021 11:45-12:15.

Recipients

Stephen Fotis

Britt Fleming

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

Message

**From:** Stephen Fotis [scf@vnf.com]
**Sent:** 4/8/2021 2:03:52 PM
**To:** Goffman, Joseph [Goffman.Joseph@epamail.epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
**Subject:** Shell Teleconference Request

Hi Joe and Tomas – On behalf of Shell, I would like to request a meeting by teleconference with you on methane and related GHG regulatory issues. In addition to myself, Marnie Funk from the Shell Washington Office and most likely several key Shell officials from Houston will be participating in the call. We can be available next week to talk if that can work with your schedules. I hope you're both doing well and look forward to working constructively together again on the methane and other GHG regulatory issues on behalf of Shell.
Best,
Stephen

**Stephen C. Fotis | Partner**

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Washington, DC 20007

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Appointment

**From:** Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]
**Sent:** 4/8/2021 7:36:51 PM
**To:** Carbonell, Tomas [Carbonell.Tomas@epa.gov]

**Subject:** Meeting Forward Notification: Checking In with Stephen Fotis
**Location:** Microsoft Teams Meeting

**Start:** 4/9/2021 4:00:00 PM
**End:** 4/9/2021 4:15:00 PM

**Recurrence:** (none)

## Your meeting was forwarded

Kabanda, Thierry has forwarded your meeting request to additional recipients.

Meeting

Checking In with Stephen Fotis

Meeting Time

Friday, 09 April 2021 12:00-12:15.

Recipients

Stephen Fotis

Britt Fleming

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

Message

**From:** Stephen Fotis [scf@vnf.com]
**Sent:** 4/7/2021 1:18:09 PM
**To:** Kabanda, Thierry [Kabanda.Thierry@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
**CC:** Britt Fleming [bsf@vnf.com]
**Subject:** RE: Checking in

Thanks much!
S.

**Stephen C. Fotis | Partner**

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(202) 413-2321 – Cell
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**From:** Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Sent:** Wednesday, April 7, 2021 8:52 AM
**To:** Stephen Fotis <scf@vnf.com>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>
**Subject:** RE: Checking in

Caution: External Email.

Invite sent.

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Wednesday, April 7, 2021 8:28 AM
**To:** Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>; Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Subject:** RE: Checking in

Hi Thierry – Just let us know what time works best for Tomas and we will accommodate his schedule.
Best,
Stephen

**Stephen C. Fotis | Partner**

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Washington, DC 20007

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scf@vnf.com | vnf.com



---

**From:** Stephen Fotis
**Sent:** Tuesday, April 6, 2021 11:08 PM
**To:** Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Cc:** Britt Fleming <bsf@vnf.com>; Kabanda, Thierry <Kabanda.Thierry@epa.gov>
**Subject:** Re: Checking in

Thanks Tomas.
S.

> On Apr 6, 2021, at 10:05 PM, Carbonell, Tomas <Carbonell.Tomas@epa.gov> wrote:
>
> Caution: External Email.
>
> Hi Stephen, thanks for your note - I would be happy to check in. I think I have a window on Friday morning if that works for you.
>
> Thierry, can you please help us schedule a brief call? Best,
>
> Tomás
>
> > On Apr 5, 2021, at 9:20 AM, Stephen Fotis <scf@vnf.com> wrote:
> >
> > Hi Tomas – I hope you had a nice Easter weekend and are doing well. When you get a moment, can you provide Britt and me with an update on Orsted. In particular, Orsted is knowing when we might be getting a response from EPA to our inquiry on the permitting cable-laying vessels under the OCS air regulations? During our last conversation, you had indicated that EPA didn't need anything further from us. Please let us know if that's still the case.
> > Thanks much,

Stephen

**Stephen C. Fotis | Partner**

**<image001.png>**

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Appointment

**From**: Stephen Fotis [scf@vnf.com]
**Sent**: 4/9/2021 12:53:57 PM
**To**: Carbonell, Tomas [Carbonell.Tomas@epa.gov]

**Subject**: Accepted: Checking In with Stephen Fotis
**Location**: Microsoft Teams Meeting

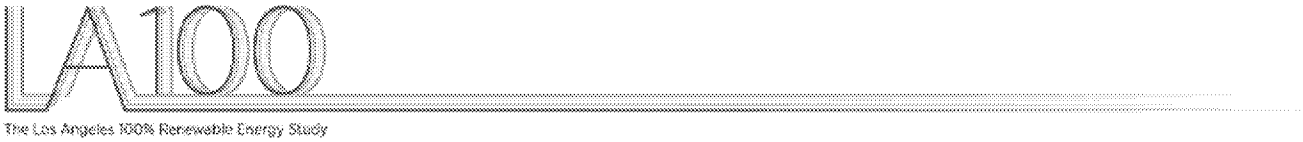
**Start**: 4/9/2021 4:00:00 PM
**End**: 4/9/2021 4:15:00 PM
**Show Time As**: Busy

**Recurrence**: (none)

Message

**From:** Stephen Fotis [scf@vnf.com]
**Sent:** 4/20/2021 1:46:23 PM
**To:** Goffman, Joseph [Goffman.Joseph@epamail.epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Arroyo, Victoria [Arroyo.Victoria@epa.gov]
**Subject:** Briefing on LA 100 by Los Angeles Department of Water and Power - April 21, 11 am

Joe, Vicky, and Tomas – Sorry for the late, but I wanted to pass along this invitation just in case you might be available to join the virtual briefing on the Los Angeles 100% Renewable Energy Study by senior officials at LADWP. If you're unavailable to participate, please feel to pass the invitation onto any of your staff who you would like to participate on your behalf. As you may know, we do a lot of work with LADWP on climate change and other environmental matters and LADWP's effort to transform its electric power system is truly exciting.
Thanks,
Stephen




We are writing to invite you to a virtual briefing on the **Los Angeles 100% Renewable Energy Study (LA100)** by the Los Angeles Department of Water and Power (LADWP) on April 21 from 11 am to noon. You will have a chance to hear from LADWP senior leadership:

- Nancy Sutley, Director of Clean Grid LA
- Reiko Kerr, Senior Assistant General Manager of Power Systems, Engineering, Planning & Technical Services
- Louis Ting, Acting Executive Director of Power System Engineering & Technical Services and Director of Power Planning & Development

**What is LA100?:** At the direction of the Los Angeles City Council, LA embarked on a plan to modernize its electricity system infrastructure—aiming for a 100% renewable energy supply by 2045, along with aggressive electrification targets for buildings and vehicles. LA100 explores pathways the nation's second-largest city could take to achieve a 100% clean energy future. Results show that meeting LA's goal of reliable, 100% renewable electricity by 2045—or even 2035—is achievable and will entail rapid deployment of wind, solar, and storage technologies this decade.

**Federal Connection:** There is an important federal nexus, National Renewable Energy Laboratory (NREL) provided rigorous, integrated engineering-economic analysis to the Los Angeles Department of Water and Power (LADWP).

**Where to Find the LA100 Report:** The report is available here.

**Let Us Know If You Can Attend:** Please RSVP to Mekkah Husamadeen at mnh@vnf.com or reply to me directly at your earliest convenience.

Dial in information for your convenience:

**When it's time, join your Webex meeting here.**

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**More ways to join:**

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**Ex. 6 Personal Privacy (PP)**

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Meeting password: Ex. 6 Personal Privacy (PP)

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United States Toll

**Join by phone**

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United States Toll
Global call-in numbers

**Join from a video system or application**

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You can also dial Ex. 6 Personal Privacy (PP) and enter your meeting number.

**Join using Microsoft Lync or Microsoft Skype for Business**

Dial Ex. 6 Personal Privacy (PP) ladwp@lync.webex.com

If you are a host, click here to view host information.

Need help? Go to https://help.webex.com

Stephen C. Fotis | Partner

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Message

**From:** Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent:** 5/4/2021 2:19:02 AM
**To:** Stephen Fotis [scf@vnf.com]; 'Goffman, Joseph' [Goffman.Joseph@epamail.epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
**CC:** 'Marnie.Funk@shell.com' [Marnie.Funk@shell.com]
**Subject:** RE: Draft White Paper on Framework for Regulating Existing Source Methane Emissions

Thanks, Stephen. Very helpful.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Monday, May 3, 2021 8:44 PM
**To:** 'Goffman, Joseph' <Goffman.Joseph@epamail.epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Cc:** 'Marnie.Funk@shell.com' <Marnie.Funk@shell.com>
**Subject:** RE: Draft White Paper on Framework for Regulating Existing Source Methane Emissions

Joe and Tomas – As indicated in my prior email, I am sending for your reference a short white paper outlining our initial thinking on a possible framework for regulating methane emissions from existing oil and gas sources under section 111(d) of the CAA. The white paper begins by identifying the key objectives of a workable and effective methane regulatory program for existing sources and then discusses the authority that CAA section 111(d) provides for the establishment and implementation of such a regulatory program. We hope that this paper gives you and your team a better idea of the ideas that we presented in our meeting last Wednesday (April 28) and can help establish a useful starting point for further discussions on possible options and approaches that you may be considering. Please don't hesitate to let Marnie or me know if you have questions or would like to discuss further these or other ideas.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

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Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com

**From:** Stephen Fotis
**Sent:** Wednesday, April 28, 2021 4:49 PM
**To:** Goffman, Joseph <goffman.joseph@epamail.epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
**Cc:** 'Marnie.Funk@shell.com' <Marnie.Funk@shell.com>
**Subject:** Follow-up from Today's Conference Call

Hi Joe and Tomas – Thanks again for making time today to meeting with Shell on the Section 111(d) issues for the oil and gas sector. After talking with Marnie, we will pull together a short white paper that outlines the CAA regulatory framework issues discussed during our meeting. This will not be too difficult to do since I already have detailed notes from which to develop the white paper. We believe that this may be best way to proceed because providing you with a white paper will give you and your team something concrete to review and evaluate the merits of this suggested approach. We hope to provide this short white paper by the end of this week.
Thanks and let us know if you have questions or thoughts on the next steps.
Best,
Stephen

**Stephen C. Fotis | Partner**

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scf@vnf.com | vnf.com

Message

**From**: Stephen Fotis [scf@vnf.com]
**Sent**: 5/19/2021 1:36:30 AM
**To**: Goffman, Joseph [Goffman.Joseph@epamail.epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
**CC**: 'Marnie.Funk@shell.com' [Marnie.Funk@shell.com]
**Subject**: Touching Base on Methane Regulation for Existing Sources

**Flag**: Flag for follow up

Hi Joe and Tomas – Marnie and I were hoping that we could get a few minutes of your time to talk next week. We don't want to get into the specific details of possible approaches for regulating methane emissions from existing oil and gas sources. Rather, we just wanted to touch base with you regarding a number of high levels issues on process for moving forward on this matter. From our perspective, a short call with just you two next week would be preferable. Just let us know if this is possible and we will everything possible to accommodate your schedule.
Thanks very much,
Stpehen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

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Washington, DC 20007

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Appointment

**From:** Rakosnik, Delaney [rakosnik.delaney@epa.gov]
**Sent:** 4/21/2021 3:40:14 PM
**To:** Stephen Fotis [scf@vnf.com]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Hengst, Benjamin [Hengst.Benjamin@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]
**CC:** Marnie.Funk@shell.com

**Subject:** Meeting with Shell re: Methane & GHG
**Attachments:** External meeting request_ (002) - Shell.DOCX; External meeting request_ (002) - Shell.DOCX; RE: Shell Teleconference Request
**Location:** Microsoft Teams Meeting

**Start:** 4/28/2021 8:00:00 PM
**End:** 4/28/2021 8:30:00 PM
**Show Time As:** Tentative

**Required Attendees:** Stephen Fotis; Carbonell, Tomas; Benjamin Hengst; Dunham, Sarah (Dunham.Sarah@epa.gov)
**Optional Attendees:** Marnie.Funk@shell.com


External meeting request_ (002) - ...


RE: Shell Teleconference ...

# Microsoft Teams meeting

**Join on your computer or mobile app**
Click here to join the meeting
**Or call in (audio only)**
Ex. 6 Personal Privacy (PP) United States, Washington DC
Phone Conference ID: Ex. 6 Personal Privacy (PP)
Find a local number | Reset PIN
By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.
Learn More | Meeting options


External meeting request_ (002) - ...

# CLEAN AIR ACT REGULATION OF METHANE EMISSIONS FROM EXISTING OIL AND GAS SOURCES
## Outline of a Regulatory Framework

The purpose of this white paper is to outline one possible framework for regulating methane emissions from existing oil and gas sources under section 111(d) of the Clean Air Act (CAA or Act). The white paper begins by identifying the key objectives of a workable and effective methane regulatory program for existing sources and then discusses the authority that CAA section 111(d) provides for the establishment and implementation of such a workable and effective regulatory program.

## Objectives of Program

The primary objectives of the regulatory program should be to achieve substantial methane emission reductions from the oil and gas sector through the implementation of control measures and techniques in a manner that—

- Is flexible and cost-efficient;
- Provides a workable path "to onboard" new technologies for measuring and reducing methane emissions;
- Establishes credible and transparent standards and protocols for the monitoring, reporting, and verification (MRV); and
- Provides a path for demonstrating regulatory equivalency of U.S. methane control measures and requirements with any steps that the EU may take through legislation to address upstream methane emissions from natural gas sold in the EU.
  A framework that could accommodate equivalency (should it be desirable for both countries) could help to preserve U.S. competitiveness and export opportunity. Furthermore, as methane intensity is under discussion in the EU, the option to express CAA emission reduction targets as methane intensity preserves the U.S.-EU optionality.

In developing this regulatory framework, EPA should be guided by the following considerations regarding the authority and discretion that CAA provides to EPA in establishing a federal-state process for the regulation of existing stationary sources under section 111(d) of the CAA. As indicated below, the broad authority and discretion afford by the Act allows EPA to establish a regulatory framework for achieving these objectives while minimizing the litigation risks of court challenges.

## Authority Provided by CAA Section 111(d)

CAA establishes a very different paradigm for regulating existing stationary sources under CAA section 111(d), as compared to the regulatory paradigm for new and modified sources under CAA section 111(b). In the case of new and modified sources, EPA itself sets, implements, and enforces the performance standards that directly apply to affected sources, while the Act establishes a federal-state process for the regulation of existing sources. Under that federal-state process, EPA only establishes emission guidelines and procedures for the regulation of existing sources, while states are primarily

responsible for setting, implementing, and enforcing the performance standards based on those EPA emission guidelines.

Flexibility in Setting Reduction Goals and Targets. This different regulatory paradigm for controlling emissions from existing sources has several important practical consequences. First, it provides increased flexibility in setting the goals or targets for reducing methane emissions from existing sources within each state. This means that EPA is not limited to only setting in the emission guidelines the performance levels for each subcategory of oil and gas sources based on what is "best system of emission reduction" (BSER) for that source subcategory. Rather, EPA (and ultimately the states) have the option of setting alternative statewide goals or targets for implementing the performance levels set for each subcategory. Possible goals or targets could include the following:

- Statewide methane intensity targets applicable to all existing affected sources within the state based on the BSER performance levels set in the state emission guidelines;

- Statewide methane intensity targets applicable to existing and new affected sources within the state, which would be blended intensity rate based on BSER performance levels for existing affected sources set in the state emissions guidelines and the Quad Oa performance standards set for new sources.

Litigation risks can be greatly minimized under this approach because the performance levels set for each subcategory in the state emission guidelines would generally follow the approach taken in Quad Oa rules for setting performance standards for new and modified sources. In particular, the methane control levels would be set for each subcategory (such as compressors, controllers, pumps, well completions, and fugitive emissions from well sites) based on the control measures and techniques that can be directly applied to and achieved by the particular oil and gas facilities subject to regulation. Although EPA could strive to set ambitious performance levels in order to maximize the methane reductions from the affected source category, the performance levels set would not be based on "outside-the-fence" control measures that might be more vulnerable to a court challenge. By contrast, the legal authority for flexible state implementation, including the establishment of statewide methane intensity targets, is expressly grounded in the statute and court precedent – thereby greatly diminishing the risk of being reversed by court challenges.

Only once control levels have been set for subcategory based on BSER would EPA establish statewide targets that achieve an equivalent level of methane reductions based on the application of emission controls for each subcategory. One important advantage of setting statewide intensity targets is that it accounts for the great diversity of sources and operations within the oil and gas source category. Instead of just focusing on only certain specific types of sources for achieving the mandated methane reductions, the regulations would provide the most cost-effective way to achieve methane reductions by setting methane emission intensity targets that would apply at the asset level for each company. This approach will ensure all methane sources are managed and allow companies to focus its control efforts on those sources that are most impactful and cost-effective to reduce methane emissions.

Similarly, there are advantages of setting one statewide intensity standard for both new and existing oil and gas sources. The combination or new and existing sources into one intensity standard provides companies with important flexibility to meet their existing source control requirements by installing new innovative control technologies and measures that can cost-effectively exceed the new source control levels mandated by Quad Oa. Those surplus reductions for a company could then be used for

meeting its existing source control obligations that would be established through the implementation of the state emission guidelines. This approach also provides important flexibility for states, whose environmental regulatory agencies are most familiar with the unique characteristics of regional oil and gas production and the varying characteristics of producing basins.

Implementation Flexibility. Another important practical consequence of the existing-source regulatory framework under CAA section 111(d) is that it provides increased flexibility in the implementation of the methane reduction goals or targets applicable to each state. As noted above, both the CAA and court precedent provide EPA with ample authority to establish various regulatory frameworks for flexible state implementation – thereby greatly diminishing the risk of these flexibility mechanisms from being reversed by court challenges.

The Clean Power Plan provided substantial flexibility for the implementation of the statewide targets or goals for $CO_2$ emissions from power plants through cap-and-trade and emission rate trading programs. While those types of market-based programs may not work as well for the oil and gas sector, there are available other possible flexible implementation mechanisms that could allow each company to focus its efforts on the most cost-effective methane reduction measures (starting with super-emitter sources). As noted above, this may be best achieved by establishing an intensity target that applies across a company's entire assets.

MRV Protocols for Demonstrating Compliance. Similarly, the regulatory framework allowed under section 111(d) provides EPA and states with considerable latitude to establish credible and reliable protocols for determining compliance with methane intensity standards. One such option is a reasonably pragmatic, but materially improved, MRV framework that has been under development since 2019 by the EU, UK, UN Environment, EDF, and several of the leading oil and gas companies. The culmination of these efforts is the Oil and Gas Methane Partnership's Methane Emissions Reporting Framework 2.0 (OGMP 2.0). The EU is now considering OGMP 2.0 as its desired MRV protocols under its new Methane Policy. OGMP 2.0 sets a necessary new standard for credible and transparent methane emissions reporting, while recognizing the technological, commercial, and cost challenges to improved emissions reporting. If adopted by the EU, it may also be the standard for demonstrating compliance with CAA performance standards and certifying natural gas imports into the EU.

# Air Emissions on Outer Continental Shelf

## Applicability and Aggregation Considerations under Outer Continental Shelf Air Regulations for Cable Laying Vessels

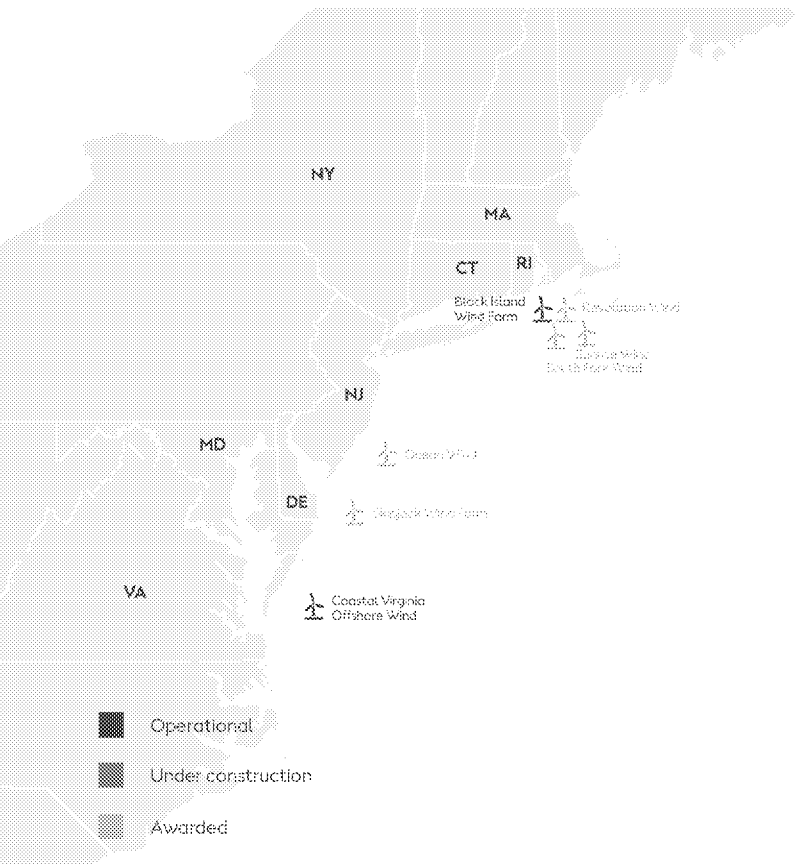
*Indicative vessel*

Ørsted

Dec. 2020

# Ørsted Offshore North America portfolio

## Awarded over 2,900 MW of offshore capacity on the East coast




**In Operation**

**Block Island Wind Farm**: 30MW

**Coastal Virginia Offshore Wind:** EPC contract, owned by Dominion Energy, 12 MW

Awarded

**Revolution Wind:** 50/50 JV w/ Eversource, 704MW (400MW to RI, 304MW to CT)

**South Fork Wind:** 50/50 JV w/ Eversource, 132MW

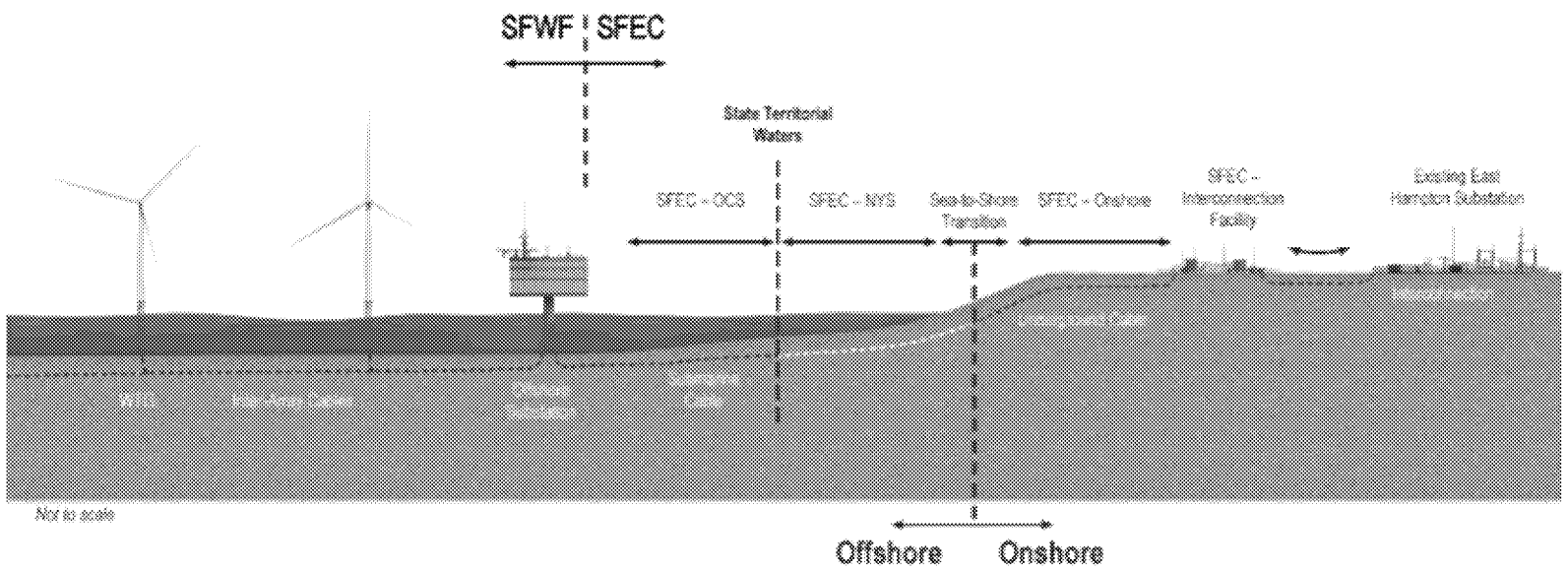
**Sunrise Wind:** 50/50 JV w/ Eversource, approximately 880MW

**Ocean Wind:** with the support of PSEG, 1,100MW

**Skipjack Wind Farm**: 120MW

# Indicative Project Operational Concept

Example concept for South Fork Wind Farm (SFWF) and South Fork (SFEC) Export Cable






Ørsted

## Statutory and Regulatory Background

- Under Sec. 328 of the Clean Air Act, EPA regulates Outer Continental Shelf (OCS) sources on Atlantic coast
- OCS source "means any equipment, activity, or facility which:
  - (1) Emits or has the potential to emit any air pollutant;
  - (2) Is regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. § 1331 et seq.); and
  - (3) Is located on the OCS or in or on waters above the OCS."[1]
- The definition "shall only include vessels when" they meet one of following two eligibility conditions:
  - The vessel is "[p]ermanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. § 1331 et seq.);" or
  - The vessel is "[p]hysically attached to an OCS source, in which case only the stationary source aspects of the vessels will be regulated."
- Consistent approach between EPA regions critical.



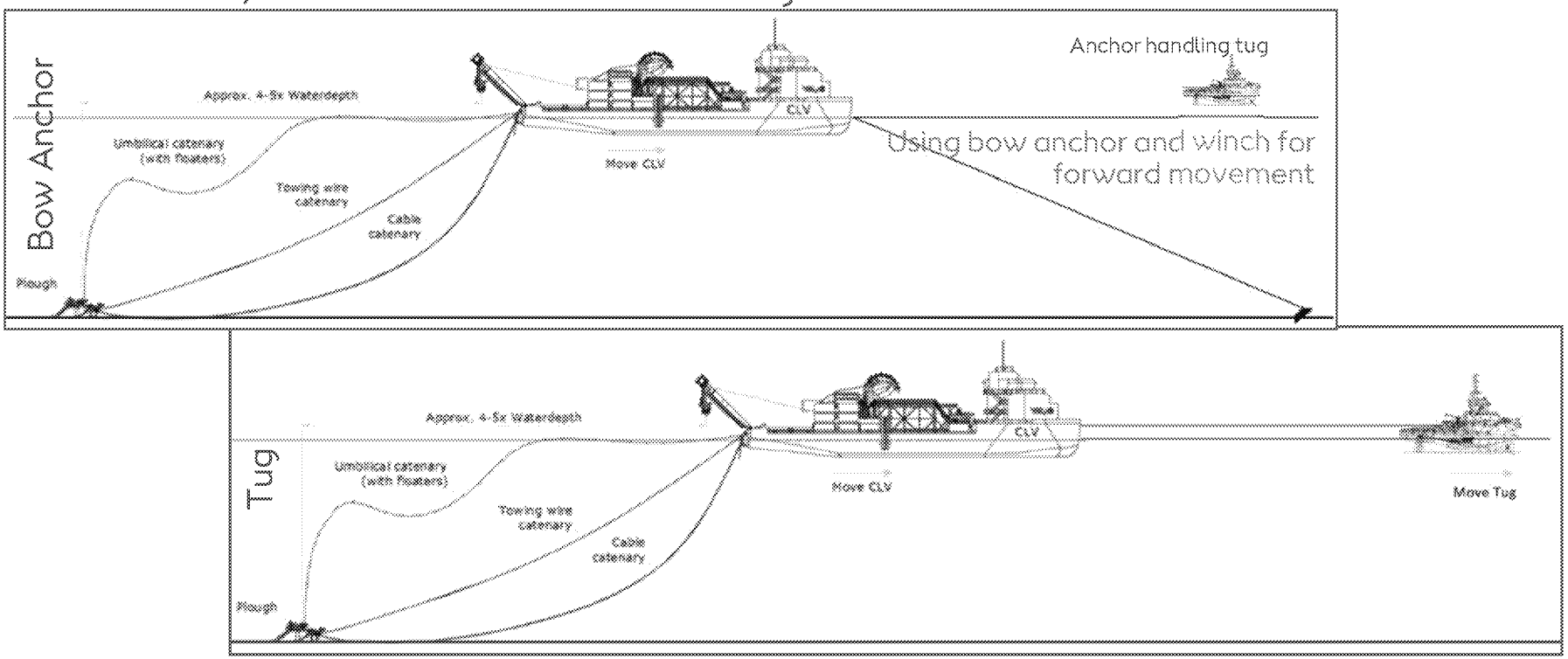
1. 42 U.S.C. § 7627; 40 C.F.R. § 55.2.

## Transmission Cable Laying Vessels (CLVs)

- CLVs can use their own propulsion systems and a dynamic positioning thruster system (DPS), a tug, or a bow anchor to create pulling force.
- Bow anchor (and winch) method can be used across range of conditions and provides preferred level of control.
  - Tugboats place anchors along the cable route ahead of the CLV.
  - Winches on the CLV pull against the anchor points to propel the vessel forward.
  - This provides sufficient forward momentum at controlled levels for the vessel to pull a jet plow or similar cable burial device across the seafloor.
- Water depth plays a critical role in the choice for a pull anchor or a DPS vessel/tug in front of the CLV
  - For example, DPS vessels typically cannot be used in waters shallower than 35 ft.
- CLVs using DPS are not OCS sources (thrusters eliminate need for anchor)

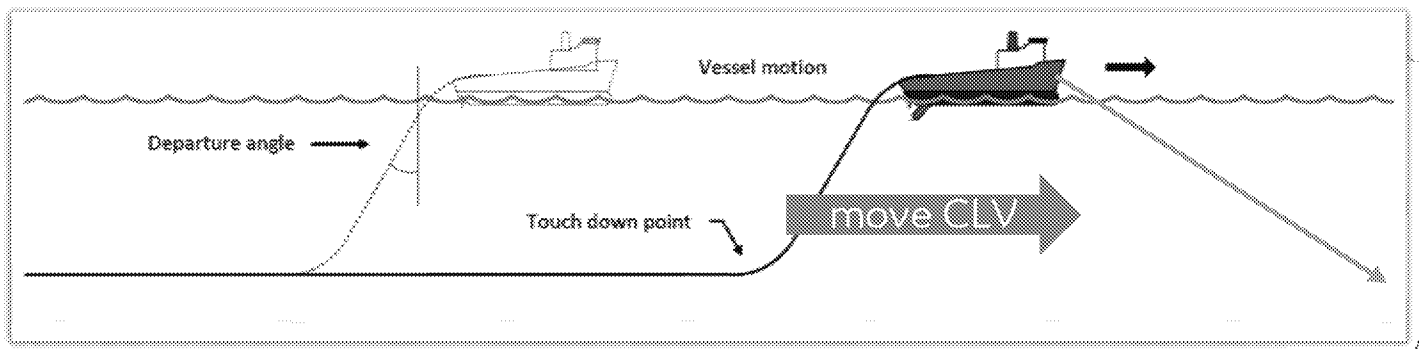
# CLVs Can Use Anchors to Generate Sufficient Pulling Force

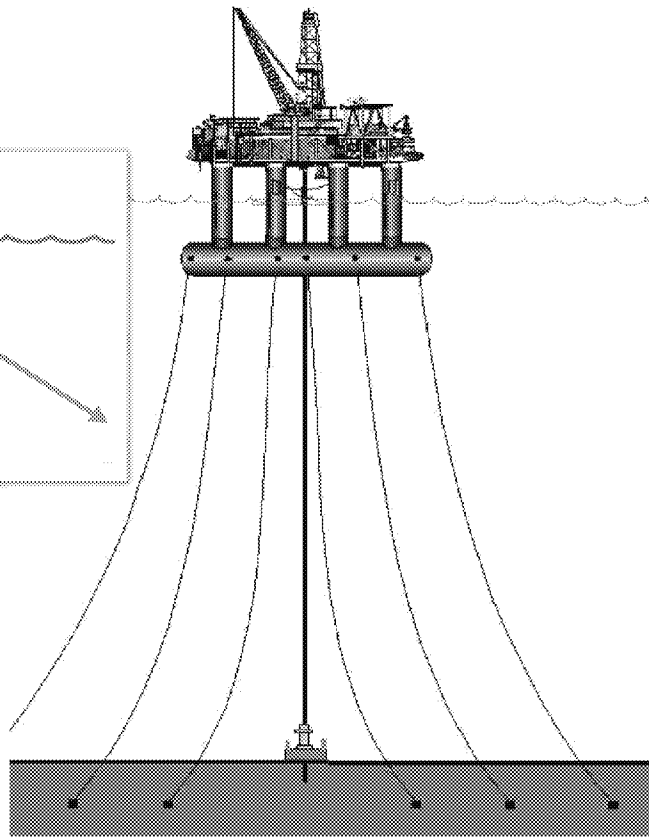
- Pulling cable plough or burial tool requires tremendous forward force
- Similar methods, different treatment under the regulations



# CLV Bow Anchors Not Used to Fix Position

– Different use of anchors from drill rigs

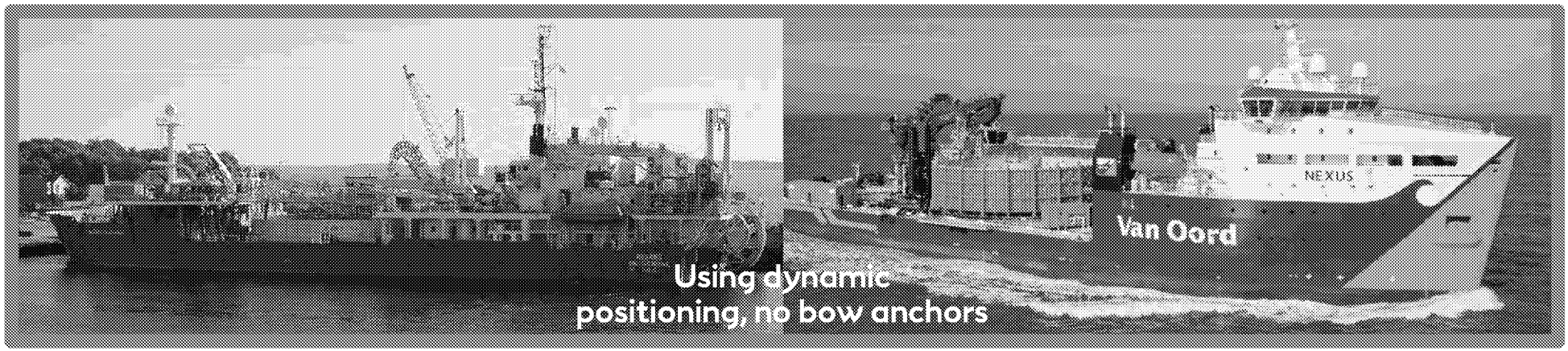


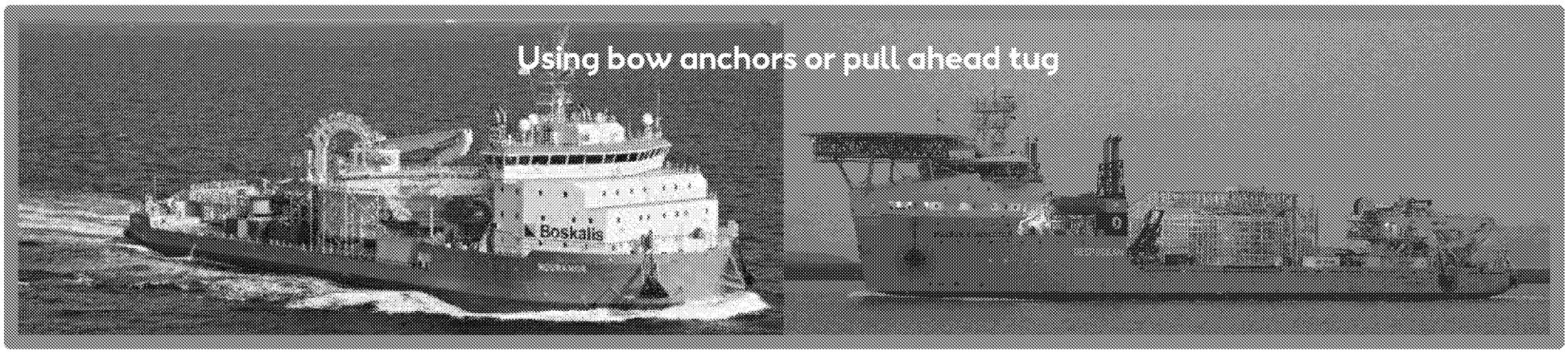



*Contrast with drill ship: "The Discoverer will then deploy the ship's anchor* ***to hold the Discoverer's position,*** *and it is at this point the Discoverer will become an OCS source."*

 *In re Shell Gulf of Mex., Inc., & Shell Offshore, Inc.*, 15 EAB 486 (describing permit condition). 

# Indicative CLVs



## Transmission Cable Laying Vessels Are Not OCS Sources

- CLVs utilizing anchors do not meet the specific applicability criteria that a vessel be
  - (1) "permanently or temporarily attached to the seabed;"
  - (2) "erected thereon;" and
  - (3) "used for the purpose of exploring, developing, or producing resources therefrom…."
- Statutory Considerations
  - Terms "attached to the seabed" and "erected thereon" are not synonymous but independent reqs.
- Part 55 Preamble focuses on stationary source activities
  - But CLVs are in continual motion and use bow anchors for propulsion.
  - Install approx. 2 mi of cable per day; not continuously attached to the sea floor for any meaningful time period
  - Not erected or in a fixed position on the sea floor
  - Use of anchors for CLVs differs from drill ships—no fixed, stationary position

## CLVs Are Not OCS Sources (cont.)

- Per Environmental Appeals Board, mere attachment to seabed is insufficient.
  - "The purpose of 'attachment' within the definition of 'OCS source' in 40 C.F.R. § 55.2 is to prevent or minimize relative movement between two vessels, between a vessel and a dock structure, or between a vessel and the seabed."[2]
  - CLVs use anchors to allow movement between vessel and seabed.
- "Erected thereon" requires secure attachment to seabed.
- Confirmed by USCG and Customs and Border Protection precedent.
- Also requires close geographic proximity to location where developing or producing OCS resources occurs—but transmission cable can stretch 60+ miles from the wind farm.

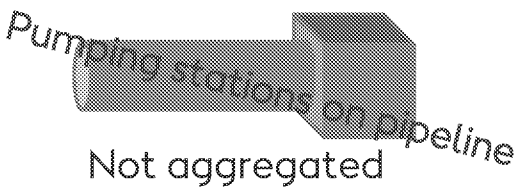
2. *In re Shell Gulf of Mex. Inc.*, 15 E.A.D. 193, 200 (E.A.B. 2011) (citing 57 Fed. Reg. at 40,793-94 (referencing activities of vessels while "at dockside")).

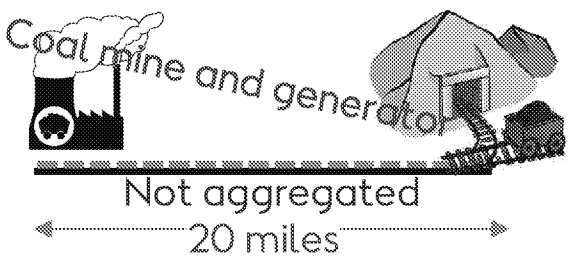
## Aggregation of OCS Sources

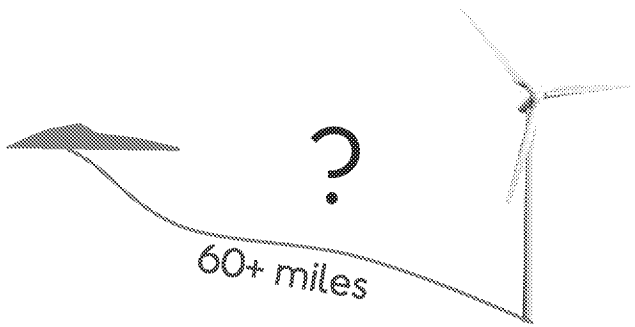
- To be OCS source, vessel must satisfy all OCS applicability criteria, including the requirement that—
  - Vessel be engaged in exploring, developing, or producing resources
- Function of CLV is different from the activities of the primary OCS source.
- Cable laying properly understood as support activity--each vessel and each vessel attachment are part of a single, integral project.
- CLVs are engaged in exploring, developing, or producing resources on the OCS only if CLV activities are combined or aggregated with the WTG construction and associated equipment that are used for developing/producing electricity on the OCS.

## Aggregation of OCS Sources – Limitation on Geographic Scope

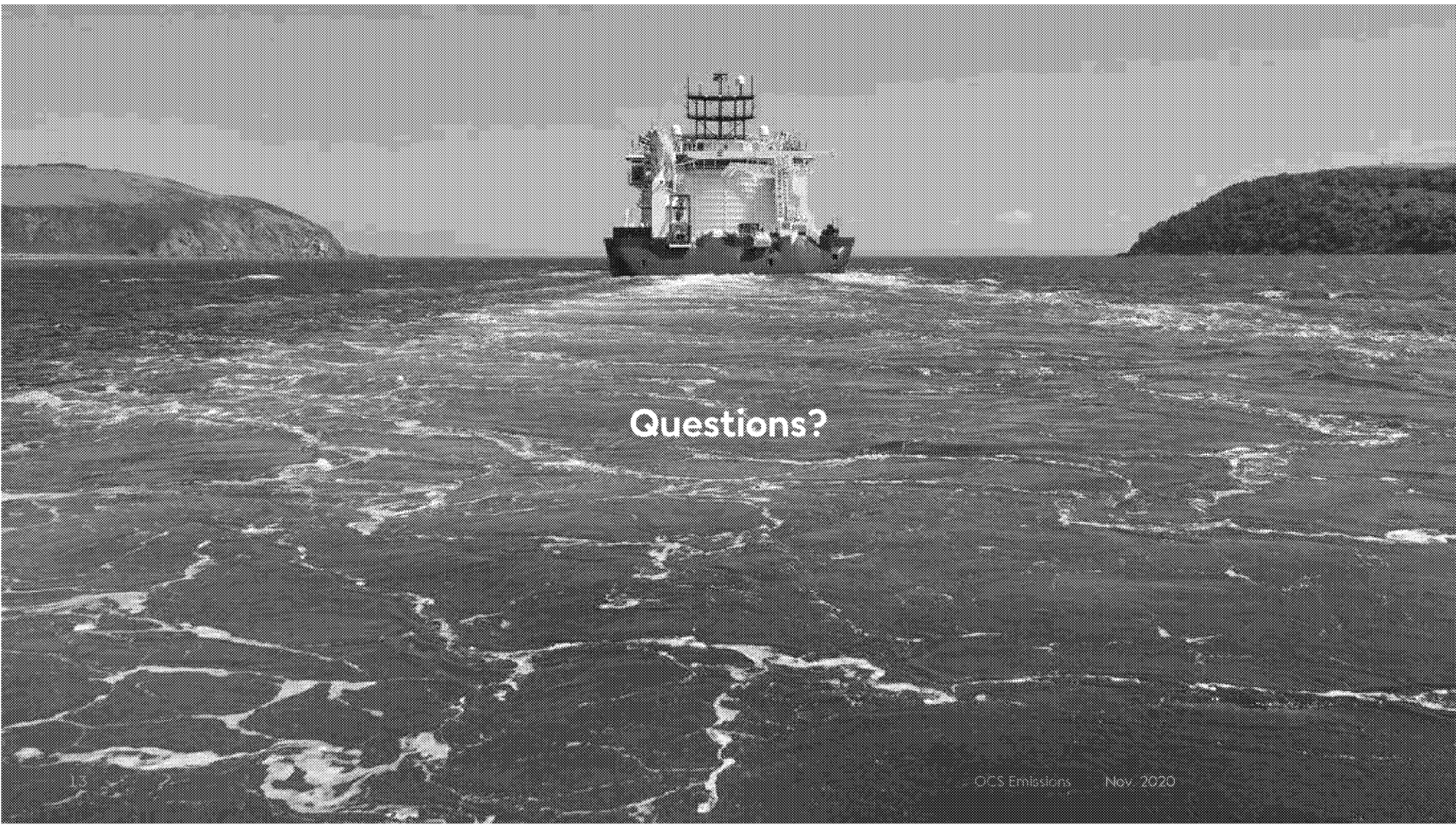
- Geographic scope of combined OCS source must be defined per current aggregation policy.
- Adjacency and "common sense notion of a plant":
  - Where emission units separated by number of miles, no longer contiguous or adjacent properties.
  - EPA "did not intend that a single source include activities that were many miles apart…for instance, with multiple sources along the same pipeline **or transmission line**."[3]
  - Boundaries of the OCS source should not include the CLV activities spanning long distances from the electrical service platforms to the onshore cable landfall location.




3. Memorandum from Anne Idsal, Interpreting "Adjacent" for New Source Review and Title V Source Determinations in All Industries Other Than Oil and Gas, Nov. 26, 2019.


Questions?

December 18, 2020

## ORSTED RESPONSES TO EPA'S QUESTIONS ON PULL AHEAD ANCHOR CABLE LAYING VESSEL

On December 7, 2020, EPA held a teleconference with Orsted on the treatment of offshore cable-laying vessel activities under the Outer Continental Shelf (OCS) regulations codified at 40 C.F.R. Part 55. As indicated at the conclusion of this discussion, Orsted is providing the following short responses to several key questions and issues that EPA raised during the teleconference.

- *How is the anchor attached to the cable laying vessel (CLV) and anchor handling tug?*
    - The CLV uses a specially designed anchor of approximately 12 tons that is positioned at the bow of the vessel. This bow anchor is attached to the CLV by means of a steel or synthetic anchor wire throughout cable laying activities. There is also a smaller anchor wire that is connected to the accompanying tugboat that assists in handling the bow anchor during the laying of the submarine cable. The anchor-handling tug will move approximately 1,200-1,600 yards ahead of the CLV[1] to a position directly over the designated anchor point along the cable route. Once correctly positioned, the tug will use its dynamic positioning system to maintain that position ahead of the CLV while it deploys the CLV's bow anchor and temporarily fixes bow anchor to the seabed floor. The tug then releases from the anchor. The CLV will then use winches to pull itself forward toward the anchor point while it lays the submarine cable. Once the CLV reaches the seabed location of the bow anchor, the anchor-handling tug reattaches to the anchor line, pulls up the bow anchor from the seabed floor using its own anchor line, puts the anchor on deck, and moves ahead to the next anchor point, where the process is then repeated. The tug is only connected to the anchor when in the process of deploying and repositioning it.
- *Are the same anchors used for cable laying purposes as would be used for typical vessel anchoring?*
    - No. Different anchors are used for different purposes, one for the propulsion of the vessel and one to secure the vessel at one location on seabed floor. The CLV's bow anchor is a special device or tool that is used for the purpose of propulsion and laying the submarine cable. The CLV is also equipped with a different set of anchors that are much smaller in size than the bow anchor and used to secure the CLV on the seabed at a fixed position or location.
      It is worth noting that the pull ahead anchor method is relatively fuel efficient compared to other installation methods because the tow force comes from the soil instead of tug engines only. The greater pulling force from a bow anchor also more readily allows for simultaneous lay and burial of the cable, rather than separate lay and burial (requiring two runs along the cable route).
- *If Orsted will not use pull ahead anchors to install the inter-array cable because of the nearby presence of structures, what is the minimum distance from a structure at which point the bow anchor could be used?*
    - The answer will depend on site specific conditions, but typically it is unlikely to see a CLV use a bow anchor closer than 1,500 feet from a fixed structure, such as a turbine foundation.
- *How were CLV activities permitted in other projects, such as Coastal Virginia and Block Island?*
    - Permitting for these other projects included utility partners and different construction techniques. For example, for the Coastal Virginia Offshore Wind project, the air permit was obtained for Dominion. The CLV in that case utilized dynamic positioning, so it was not considered an OCS source. The emissions were included in the OCS source PTE. For Block Island, the sea-to-shore cable connecting the mainland to the island (partially through federal waters) was entirely separate from the project for constructing the wind farm and served a different purpose from the cable connecting the wind farm in state waters to the substation on the island.

[1] Assuming a straight cable route. For portions of the route with curves, anchor points are closer together.

- *The EAB has interpreted the phrase "erected thereon" to include only those activities that the CLV can perform at the geographic location where it is authorized to conduct the OCS activity for the purpose of exploring, developing, or producing resources. Does this interpretation of "erected thereon" include the CLV activities because the vessel can be said to be performing the activities for which it is designed when laying cable along the export route?*
    - No. Performing the activities for which the CLV vessel is designed is only one part of the equation. The EAB also ruled that the term "erected upon" requires the vessel "to be securely attached to the seabed" and "sufficiently secure and stable to commence operations" – such as when a drill ship attaches at one location and begins to drill into the seabed for the production of oil. Moreover, the EAB used function of the vessel to distinguish a situation where a drill ship would anchor on the OCS but in a location hundreds of miles away from the location for drilling. It is only where the drill ship is secured on a fixed point *and* located to perform its operational function that it is considered to be an OCS source.
    - This EAB interpretation is authorized by both the statute and EPA implementing regulations. Section 328(a)(4)(D) of the Clean Air Act (CAA) expressly defines the term "new OCS source" as "an OCS source which is a new source within the meaning of section 111(a) of this title" (*i.e.*, the CAA). Notably, the definition of a "new source" is limited to only "stationary sources" and does not cover mobile sources, such as "nonroad engines" regulated under Title II of the CAA.[2] EPA's regulations confirm this interpretation, providing that when "Physically attached to an OCS facility, … only the stationary sources aspects of the vessels will be regulated." 40 CFR 55.2. A CLV moving along a cable route dozens of miles long is not stationary or secured on the seabed at a fixed position. Notably, CLVs do not stay at one particular location. Nor do the vessels even stay within the wind development area. Rather, they travel along the transmission route that can stretch 60+ miles from the centroid of the wind development area to the landfall location near the onshore substation.
- *How does an offshore substation and export cable serving a wind farm compare to an onshore substation and other ancillary electrical equipment serving an onshore power plant? If the substation and interconnection facility are included as part of the onshore power plant, should they also be included as part of the OCS source even if they are outside the boundaries of the wind development area?*
    - The NSR permitting requirements apply only to those building structures, facilities, or installations that emit or may emit a regulated air pollutant. They do not apply to non-emitting facilities and activities located at the stationary source. This interpretation is expressly confirmed by the NSR regulations. The definition of "stationary source" is limited to a facility that "emits or may emit a regulated NSR pollutant,"[3] while the term "building, structure, facility or installation" covers only those "emitting activities" located at the stationary source.[4] While there are typically non-emitting facilities and activities within the boundary of the plant site, those ancillary non-emitting facilities and activities are not part of the "stationary source" that is regulated under the NSR permit program.
    - For example, an onshore power plant will include a variety of non-emitting buildings and structures at the plant site, including an energy control center for operating the electric generating unit(s), administrative buildings, and warehouse structures for storing equipment and

[2] *See* Sections 111(a)(2), (3) of the CAA (definitions of "new source" and "stationary source").
[3] 40 C.F.R.§ 52.21(b)(5).
[4] *Id.* at § 52.21(b)(6)(i).

materials. In addition, the plant site will typically include switchyards or other electrical equipment for transmitting the electricity generated at the power plant to the electric power grid. None of these non-emitting equipment or structures fall within the NSR definition of a stationary source and therefore are not covered as regulated facilities or activities under the NSR program. For similar reasons, any substations, transmission lines or other non-emitting electrical equipment beyond the fence line of the plant are not aggregated with the onshore power plant – even if they are located nearby to the plant and owned and operated by the same entity as the plant operator.

- There is no reason to treat offshore wind farms any differently than onshore power plants with respect to their non-emitting facilities and activities. The offshore transmission export cable and the offshore substation perform the same function as electrical transmission facilities discussed above for onshore power plants. To the extent that these electrical transmitting facilities have no emissions resulting from their operation, they are not a stationary source or OCS source (as the case may be) that is regulated under the NSR program. This is clearly the case with respect to offshore transmission export cable used for delivering electricity from wind farms. In some cases, however, the offshore substation may also be installed with a diesel engine that may operate on an emergency basis. To the extent that this is the case, the diesel engine itself on the offshore substation is an emitting activity that could be regulated under the NSR program. In particular, the diesel engine would be regulated if the substation is located either within the wind development area or in close proximity thereto. However, it is also possible that the diesel engine may not be aggregated if the substation is located at significant distance from the wind development area or if the substation is located in state territorial waters and not within the OCS. In these latter two cases, the diesel engine on the substation is not regulated as part of the OCS source.

ProvPort
(Construction Emission Estimates)

New Bedford
(Construction
Emission Estimates)

Port of New London
(Construction Emission Estimates)

Substation

Shinnecock Fish Dock, Inc.,
(Operation/Maintenance Emission Estimates)

12.2 mi.

27.8 mi.

14.5 mi.

25.9 mi.

25 mi.

43.7 mi.

61.8 mi.

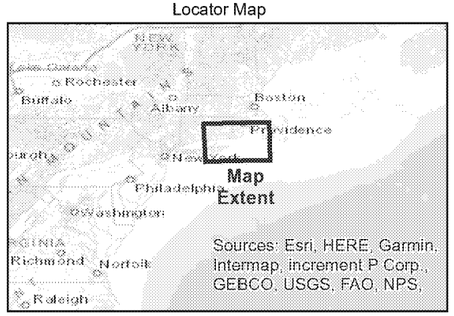
76 mi.

62.1 mi.

47.5 mi. (Sparrow's Pt)

47.3 mi. (Norfolk)

Locator Map




## Legend

- Estimated Project Center
- Midpoint Between MWA Buffer/SFEC Intersection and Shinnecock Vessel East/West Route Turning Point
- Port
- 3-Nautical Mile State Waters Boundary (3.45 Statute miles)
- 25-Nautical Mile Federal Waters Boundary
- Vessel Route
- SFEC and Project OCS/Permit Area

**South Fork Export Cable (SFEC)**

- Onshore Substation
- SFEC

Source:
ESRI online map service; World Topographic Map.

N

0 9.5 19
Miles

0 10 20
Kilometers

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

DRAFT

South Fork Wind Farm

**South Fork Export Cable and Project OCS/Permit Area, Ports, and Vessel Routes**
**South Fork Wind Farm**
Deepwater Wind
New York/Rhode Island, US

JACOBS

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VanNess Feldman LLP

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September 30, 2020

Anne L. Austin
Principal Deputy Assistant Administrator
Office of Air and Radiation
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue N.W.
Mail Code 6101A
Washington, D.C. 20460

**RE: TREATMENT OF OFFSHORE CABLE-LAYING VESSEL ACTIVITIES UNDER THE 40 C.F.R. PART 55, OUTER CONTINENTAL SHELF AIR REGULATIONS**

Dear Ms. Austin:

On behalf of Orsted Wind Power North America LLC (Orsted), we are requesting guidance from the Environmental Protection Agency (EPA or Agency) regarding the permitting of offshore wind energy projects that Orsted is currently developing in the Outer Continental Shelf (OCS). Orsted is a global leader in the development, construction, and operation of offshore wind farms. In the United States, Orsted is actively working to build and bring online more than 15,000 megawatts of new offshore wind generating capacity by 2030. This effort will require Orsted to obtain separate air permits pursuant to 40 C.F.R. Part 55 for the construction and operation of several new wind projects off the eastern seaboard.

As discussed briefly below and in more detail in the attached analysis, this request arises from an issue raised in discussions for a project with Region 1: whether and how the OCS New Source Review (NSR) permitting requirements (OCS NSR permits) should apply to pull-ahead anchor cable-laying vessels (CLVs). Orsted expects other of its projects—both within Region 1 and in Regions 2 and 3—will submit notices of intent or OCS NSR air permit applications within the next year. CLVs will be used to install offshore electric transmission cables (export cables) connecting these new offshore wind farms on the OCS to landfall locations where the cables connect to onshore substations and related infrastructure. Our analysis specifically focuses on CLV activities conducted by those vessels utilizing anchors for propulsion, as the Agency has already determined that CLVs using a dynamic positioning system (computer-controlled thrusters rather than anchors) are not OCS sources.

Attached for your review is an analysis that Orsted has prepared on the statutory and regulatory provisions relevant to the OCS NSR permitting issues, as well as administrative and judicial precedent interpreting these provisions. Based on our detailed review of these issues in the attached analysis, we seek confirmation or clarification on the following points:

- Transmission cable-laying activities conducted by CLVs utilizing anchors for propulsion should not be regulated as an OCS source and treated as "stationary source" activities because the CLVs do not meet the specific applicability criteria for regulating those vessels as an OCS source under the Clean Air Act and the implementing regulations at 40 C.F.R. Part 55. As explained in the attached analysis, CLVs utilizing anchors for propulsion fail to meet the OCS source definition criteria that a vessel be (1) "permanently or temporarily attached to the seabed;" (2) "erected thereon;" and (3) "used for the purpose of exploring, developing, or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. §1331 et seq.)."[1] These vessels are in continual motion and use pull-ahead anchors for propulsion purposes, not for staying fixed in one place or being continuously attached to the sea floor for any meaningful time period.

- Even if such CLV activities were subject to OCS NSR regulation, those vessel activities—which can stretch for many dozens of miles along a linear route—should be aggregated with the primary OCS source activities for the development of the wind farm. Those primary OCS source activities consist of the construction and operation of the offshore Wind Turbine Generators (WTGs) and other related offshore activities in the Wind Development Area (WDA).[2]

- Consequently, for purposes of modelling and for determining the potential to emit, the geographic boundaries should be limited to 25 miles of the centroid of the WDA. This geographic limitation is required by current EPA policy for defining the boundaries of a "stationary source" under the federal NSR program.

A consistent national approach that correctly applies the relevant statutory and regulatory requirements to cable laying activities in the OCS would assure consistency among the EPA regions and expedite the issuance of OCS NSR permits for other offshore wind projects along the Atlantic seaboard, including Ocean Wind, Revolution Wind, Sunrise Wind, and Skipjack Wind now being developed by Orsted.

[1] *See* Section 328(a)(4)(C) of the Clean Air Act, 42 U.S.C. § 7627; 40 C.F.R § 55.2.
[2] The WDA generally consists of the leased area of federal OCS waters where the WTGs for the particular wind project will be installed and operated.

We look forward to discussing this issue with you and your staff and answering any questions.

Sincerely,

Stephen C. Fotis

Stephen C. Fotis
Counsel for Orsted Wind Power North America LLC

CC: Karl Moor
Kelley Raymond
David Harlow
Greg Dain

VanNess
Feldman

# TREATMENT OF CABLE-LAYING VESSEL ACTIVITIES ON THE OCS UNDER 40 C.F.R. PART 55, OUTER CONTINENTAL SHELF AIR REGULATIONS

## EXECUTIVE SUMMARY

Orsted has been working with Region 1 in advance of submitting an Outer Continental Shelf (OCS) New Source Review (NSR) permit for South Fork Wind, which will be located on the OCS off the coasts of Rhode Island and Massachusetts. One important issue raised by Region 1 pertains to when and how the OCS air regulations under 40 C.F.R Part 55 should apply to cable-laying vessels (CLVs) installing the offshore export cables that will transmit the electricity generated by these new offshore wind farms to onshore substations and related infrastructure.

Orsted is proposing to use CLVs that move along portions of the designated cable route by a series of winches and anchors when the use of the dynamic positioning system (DPS) is not feasible.[1] Tugboats place anchors along the cable route ahead of the CLV, and winches on the CLV pull in the anchor, moving the vessel forward. This provides sufficient forward momentum (while minimizing lateral drift) for the vessel to pull a jet plow or similar cable burial device. When engaged in cable-laying activity, the vessels are not stationary but instead lay and bury cable behind the vessel at a rate of about two miles per day.[2]

The focus of this inquiry has been on only those CLV activities conducted by vessels utilizing anchors for propulsion. The Agency already has determined that CLVs are not OCS sources for NSR purposes in those cases when these vessels are using a DPS (a computer-controlled system of thrusters with no anchors) to advance and maintain lateral position along the export cable route.[3] While CLVs can, and frequently do, use DPS, seafloor conditions and water depth may necessitate the use of pull-ahead anchors to

---

[1] A dynamic positioning system uses computer-controlled thrusters to maintain position along the cable route, and the ship's forward momentum comes from its own on-board propulsion, not winches and anchors. At the time of permit application submittal, it is difficult to know with precision the portions of the route for which Orsted can use a DPS instead of a vessel using pull ahead anchors. To take a conservative approach that will ensure maximum operational flexibility, Orsted is proposing in its OCS NSR permit applications that the anchors will be regularly used for propulsion purposes to help the vessel pull cable-laying equipment (such as a jet plow) along the export cable-laying route.

[2] CLVs are distinct and different from the jack-up vessels that are used to install foundations and structures for supporting the WTGs and associated wind farm equipment. As a general matter, these jack-up vessels (whether self-propelled or not) have retractable metal legs with spud cans that attach to the seafloor. The metal legs, along with a mechanical lifting system, enable the vessel to lower its legs into the seabed and elevate its hull to provide a stable work deck. In a prior OCS NSR permit for the construction and operation of another wind farm project, EPA has determined that a jack-up vessel becomes an OCS source when at least three legs have attached to seafloor and ceases to be an OCS source when the vessel retracts enough of its legs from the seafloor so that fewer than three legs remain attached to the seafloor. *See Outer Continental Shelf Air Permit for the Cape Wind Energy Project*, OCS-R1-01 at 4 (2011) (definitions of OCS Attachment and OCS Detachment).

[3] EPA Memorandum, *Source Determination Analysis for Vineyard Wind OCS Windfarm* at 9 (June 26, 2019) (Vineyard Wind OCS Guidance).

provide additional propulsion for pulling the cable laying equipment behind the vessel.[4] In this instance, the Region also has preliminarily treated CLVs using pull-ahead anchors as OCS sources, but Orsted understands EPA is still examining how these vessels should be treated as a general matter under the OCS NSR program.

The following analysis concludes that CLV activities are not the type of stationary-source activities that should be regulated as an "OCS source" under 40 C.F.R. Part 55 because these vessels do not meet all of the required elements that are set forth in the regulatory definition of "OCS source" at 40 C.F.R. § 55.2.

According to the regulations, an OCS source "means any equipment, activity, or facility which: (1) Emits or has the potential to emit any air pollutant; (2) Is regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. § 1331 et seq.); and (3) Is located on the OCS or in or on waters above the OCS."[5] The definition "shall only include vessels when" they meet one of following two eligibility conditions:

- The vessel is "[p]ermanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. § 1331 et seq.);" or

- The vessel is "[p]hysically attached to an OCS source, in which case only the stationary source aspects of the vessels will be regulated."[6]

The CLV activities at issue here do not meet the requirements noted above for OCS regulation. In particular, the CLVs never become "permanently or temporarily attached to the seabed," and are not erected on the seabed.[7] This conclusion is confirmed not only by the interpretation of those terms not just in EPA's preamble discussions to the Part 55 OCS regulations, but also by numerous rulings of EPA's Environmental Appeals Board, U.S. Customs and Border Protection, and various federal court decisions regarding the limitations placed on the regulation of OCS sources under the Clean Air Act (CAA or Act) and the Outer Continental Shelf Lands Act (OCSLA).

The function and nature of CLV activities are more akin to mobile sources than stationary sources. Notably, EPA has expressly recognized that activities exempted from Part 55 OCS regulation include those activities where vessels are traveling "en route to or from an OCS source" and those "non-stationary source activities while at dockside" at the OCS source.[8] Because these CLVs are in perpetual motion and use pull-ahead anchors as a

[4] Such equipment includes a mechanical cutter, mechanical plow, and jet plow.
[5] 40 C.F.R. §55.2.
[6] *Id.*
[7] *See* Section 328(a)((4)(C) of the Clean Air Act, 42 U.S.C. § 7627; 40 C.F.R § 55.2. In addition, if EPA insists upon treating CLVs as separate and distinct OCS sources, CLVs would also fail to meet the third criterion of being used for the purpose of exploring, developing or producing resources therefrom within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. §1331 *et seq.*)."
[8] Outer Continental Shelf Air Regulations, 57 Fed. Reg. 40,792, 40,794 (Sept. 4, 1992).

propulsion method and not to fix the vessels at one specific location, they do not meet the condition of attachment as required by the EPA regulations.

Likewise, these CLV activities fail to meet the condition that vessel must be "erected thereon" for the purpose of OCS exploration, development or resource production. To be erected thereon, the Environmental Appeals Board (EAB) has determined that a vessel must be attached to the seabed and sufficiently secure and stable to commence operations. Mere attachment is not sufficient. These are characteristics deemed critical by the EAB when assessing whether it is appropriate to regulate a vessel's activities as part of the OCS source and subject to NSR permitting requirements.[9]

Finally, in the event that the CLV activities were ever determined to meet all of the applicability criteria noted above for an OCS source (which is not the case), the analysis below presents the reasons why EPA would be required to aggregate the CLV activity with the other emitting elements of the wind farm. As a result, EPA should limit the geographic scope of the OCS source to only those CLV activities occurring within 25 miles of the centroid. The obligation to limit the geographic scope not only makes good practical sense, but also is required by current EPA regulations and policy for defining the boundaries of a "stationary source" under the federal NSR program.[10]

## CABLE-LAYING VESSELS ARE NOT AN OCS SOURCE BECAUSE THE VESSEL DOES NOT ATTACH TO THE SEABED AND IS NOT ERECTED THEREON

The Part 55 OCS regulations, which implement Section 328 of the CAA, establish detailed rules for determining which offshore sources and vessel emissions activities are subject to the NSR permitting requirements.[11] Among other things,[12] the definition of "OCS source" at 40 C.F.R. § 55.2 includes only those vessels that meet one of the following two eligibility conditions. The first is that the vessel is "[p]ermanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. §1331 et

[9] Furthermore, the analysis below demonstrates that CLV activities—if treated as a separate and distinct source—would also fail to meet the condition that the vessel is being used for exploration, development, or production of resources on the OCS. Most importantly, the purpose of CLV activities is to install offshore export cable on the seabed. This activity is fundamentally different from the activities of the primary OCS source—namely the generation of electricity by the operation of offshore WTGs and other associated activities in the WDA. As discussed below, the only way CLV activities can be characterized as performing a "resource development" function is if they are treated as a support facility for the WTGs and other activities that comprise the OCS source.

[10] Vineyard Wind OCS Guidance at 9-12.

[11] *See* 40 C.F.R. § 55.3 (establishing the applicability rules).

[12] The federal regulations at 40 C.F.R. § 55.2 also define an OCS source to include any equipment, activity, or facility that (1) emits or has the potential to emit any air pollutant; (2) is regulated or authorized under the OCSLA (43 U.S.C. § 1331 *et seq.*); and (3) is located on the OCS or in or on waters above the OCS. These three requirements are identical to the three criteria for defining an OCS source under section 328(a)(4)(C) of the Clean Air Act.

seq.)."[13] The second is that the vessel is "[p]hysically attached to an OCS source, in which case only the stationary source aspects of the vessels will be regulated."[14]

The CLV does not meet the second eligibility condition stated above. The vessel is used to lay submarine electric cable between the offshore substations and from those substations to the landfall location near the onshore substation. The CLV never physically attaches to an OCS source (*e.g.*, jack-up vessels of substation with diesel generator). The cable has no potential to emit and thus cannot be an OCS source.

With respect to whether offshore CLV activities satisfy the first eligibility condition, Region 1 views the two terms—"attached to the seabed" and "erected thereon"—as synonymous or interchangeable. The following is a brief analysis of the many reasons why it is not appropriate for EPA to determine that the CLVs that use anchors for propulsion meet this first eligibility condition. It also demonstrates how the two requirements—attached and erected thereon—are not interchangeable and instead are separate, independent requirements.

As discussed below, this interpretation is confirmed by the well-established cannon of statutory construction that requires full effect be given to every clause or word of the statute or regulation. In addition, it is confirmed by Part 55 preamble statements reflecting EPA's intent to exclude from regulation "non-stationary source activities." Finally, it is confirmed by rulings of the EAB, U.S. Customs and Border Protection (CBP) of the Department of Homeland Security, and various federal court decisions regarding the limitations placed on the regulation of OCS sources under the CAA and the OCSLA.

CAA/OCSLA Statutory Construction: Courts aim "to give effect, if possible, to every clause and word of a statute."[15] Courts are thus "reluctan[t] to treat statutory terms as surplusage" in any setting.[16] The case against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.[17]

In evaluating section 4(a)(1) of OCSLA (43 U.S.C. § 1331 et seq.) as incorporated by the CAA, courts would interpret Congress' intent for "attached to" and "erected thereon" to serve as independent requirements based on the surplusage canon. The definition of "erected" implies fixedness in position—befitting of a stationary source—and EPA should not gloss over it.[18] Every clause and word of the OCSLA and CAA are to have

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[13] 40 C.F.R. § 55.2.
[14] *Id.*
[15] *United States v. Menasche*, 348 U.S. 528, 538-539 (1955) (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)).
[16] *Babbit v. Sweet Home Chapter, Communities for Great Ore.*, 515 U.S. 687, 698 (1995).
[17] *Marx v. General Revenue Corp.*, 568 U.S. 371, 386 (2013); *see also Appalachian Power Co. v. EPA*, 135 F.3d 791, 819 (1979) (refraining from interpreting CAA in a way that creates surplusage in the context of interpreting compliance deadlines for $NO_x$ emissions under the Acid Rain Program); *Motor and Equipment Mfrs. Ass'n, Inc. v. EPA*, 627 F.2d 1095, 1107 (1979) (interpreting EPA's waiver authority related to in-use maintenance of motor vehicles); *Demette v. Falcon Drilling Co., Inc.*, 280 F.3d 492, 498 n. 19 (5th Cir. 2002) (determining that certain jack-up vessels can be considered OCSLA-regulated sources).
[18] *See* Merriam Webster Dictionary ("[T]o fix in an upright position …").

effect; to ascribe the same meaning of "attached to" as "erected upon" would deem the corresponding phrase superfluous, void, or insignificant. And as in instances where the case against surplusage is strongest, which is where an interpretation would render superfluous another part of the same statutory scheme, so would treating "attached to" the same as "erected thereon" render superfluous the other phrase as the two requirements are in the same statutory scheme—the definition of an OCS source under the OCSLA, as incorporated by the CAA. Courts have upheld cases against surplusage under the statutes at issue here, the OCSLA and the CAA, so courts would likely apply a case against surplusage in this situation and find "attached to" and "erected thereon" to have separate, different, independent meanings in the statutory scheme.

Part 55 Preamble Statements: EPA's preamble to the final Part 55 OCS regulations makes it clear that "only the vessel's stationary source activities may be regulated" and "when vessels are in transit, they are specifically excluded from the definition of OCS source by statute."[19] In support of this interpretation of the CAA, EPA cites to legal precedent confirming that "only the stationary source activities of vessels at dockside will regulated under title I of the Act (which contains NSR and [Prevention of Significant Deterioration (PSD)] requirements), since EPA is prohibited from directly regulating mobile sources under that title."[20] This point is further underscored by EPA's preamble statement that "Section 328 [of the CAA] does not provide authority to EPA to regulate the emissions from engines being used for propulsion of vessels" under Title II of the CAA.[21] Such activities that are exempted from Part 55 OCS regulation include those activities where vessels are traveling "en route to or from an OCS source" and those "non-stationary source activities while at dockside" at the OCS source.[22]

Viewed in light of these preamble statements, a strong factual case can be made for characterizing the activities undertaken by CLVs as mobile (*i.e.*, non-stationary) sources that should not be subject to Part 55 OCS regulation. As described above in the previous section, both the function and activities of CLVs are akin to those of mobile sources. The anchors of CLVs are not used for affixing the vessel in one particular place like an oil and gas drill ship or other vessel that anchors to the seabed to establish a secure and tight connection to prevent movement from a specific location. Rather, the anchors are used to pull CLVs forward along the export cable route at a rate of up to two miles per day. In effect, the vessels are using the anchors for propulsion purposes and to maintain position along a linear route. This function is characteristic of mobile sources in transit, rather than stationary sources attached at one fixed location on the seabed.[23] The CLVs may be moving slowly, but they are always mobile.

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[19] Outer Continental Shelf Air Regulations, 57 Fed. Reg. 40,792, 40,793 (Sept. 4, 1992).
[20] 57 Fed. Reg. at 40,793-94 (citing *NRDC v. EPA*, 725 F.2d 761 (D.C. Cir. 1984)).
[21] *Id.* at 40,794.
[22] *Id.*
[23] The amount of time that a project may need to use pull-ahead anchoring will depend on water depth, seafloor characteristics, and other site-specific factors. If the vessel can pull the cable laying equipment using DPS alone, anchor pulling may not be needed at all. For other projects, it may be appropriate to use only anchor pulling or some combination of DPS and anchor pulling, with the proportion of anchor-pulling use determined by site-specific conditions and vessel capabilities.

EAB Decisions on "Attached to" Criterion: The preceding interpretation of the statute and regulations is consistent with several EAB decisions on the meaning of the phrase "attached to the seabed." In a 2010 decision involving drill ship activities for the exploration of oil in the Chukchi and Beaufort Seas,[24] the EAB generally affirmed the EPA Region's determination that a drill ship used for oil exploration "does not become an OCS source until it is sufficiently secure and stable in a position to commence exploratory activities."[25] Under this interpretation, attachment to the seabed only occurs once the drill ship "is attached by an anchor to the seabed at a drill site" so that the drill ship is fixed "at the location for the purpose of exploring, developing, or producing resources from the seabed and its activities are more closely aligned with the activities of a stationary source than of a vessel transiting the sea."[26]

In a subsequent EAB decision in 2011, also involving Shell Gulf of Mexico, Inc. and Shell Offshore Inc.'s (collectively, Shell) same offshore exploratory activities, the EAB further clarified that—

> The purpose of "attachment" within the definition of "OCS source" in 40 C.F.R. § 55.2 is to prevent or minimize relative movement between two vessels, between a vessel and a dock structure, or between a vessel and the seabed.[27]

The EAB based its interpretation, in part, on the plain meaning of the regulatory term "attached to," which is defined in the dictionary to mean "to make fast," "firmly fix," "fasten," "secure," or "join."[28] Another important factor in support of this conclusion was the "intermittent and insubstantial" physical connections between the drill ship and icebreaker vessel at issue in this case.[29] Based on this factor, the EAB concluded that the anchor cable, which is repeatedly connected and disconnected from one of the drill ship's anchors, is not intended in any way to restrict the location of the icebreaker vessel. Rather, the anchor cable will be played out as the icebreaker travels away from the drill ship so that the icebreaker is merely transporting the anchor and the end of the anchor cable to the designated anchor site. The EAB agreed with EPA that this does not constitute "attachment" as that term used in the definition of OCS source.[30]

Although the EAB did not define with precision when a vessel becomes attached to the seabed (or an OCS source), these two decisions clearly establish several minimal federal requirements for making an affirmative determination on attachment. First, the vessel must

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[24] *See In re Shell Gulf of Mex., Inc.*, 15 E.A.D. 103 (E.A.B. 2010) (*Shell 2010*), *order on motions for reconsideration and clarification* (E.A.B. 2011).
[25] 15 E.A.D. at 135.
[26] *Id.* at 134, 137.
[27] *In re Shell Gulf of Mex., Inc.*, 15 E.A.D. 193, 200 (E.A.B. 2011) (citing 57 Fed. Reg. at 40,793-94 (referencing activities of vessels while "at dockside")).
[28] *Id.* at 199 (citations omitted).
[29] *See id.* at 201.
[30] *Id.* at 200-01.

be attached by an anchor to the seabed at a location for the purpose of exploring, developing, or producing resources from the seabed—such as placing the anchor at a drill site. Second, attachment does not simply mean "any physical connection between" the vessel and the seabed. Rather, the connection must be substantial and last for an extended time period.[31] And third, the vessel's activities (once the requisite connection to the seabed has occurred) must be more closely aligned with the activities of a stationary source than a vessel that is moving from one location to another.[32]

As noted above, CLV activities fail to satisfy the necessary factors leading to an affirmative determination on attachment. First, the anchors of CLVs are not used for affixing the vessel in one place like a drill ship or other vessel that anchors to the seabed to establish a secure and tight connection. In fact, the vessels are continually redeploying the anchor ahead of the vessel along the export cable route. Second, the anchors are only used in order to assist during cable burial operations at those times when the nature of the seafloor and water depth require more pulling force than the ship's thrusters could provide alone. As noted above, the exact amount of time that the anchors are used will depend on the site-specific conditions and a variety of circumstances that the vessel may encounter in laying the electric cable. And third, as noted above, CLVs operate more like mobile sources than stationary sources.

EAB Decisions on "Erected Thereon" Criterion: The EAB has determined on several occasions that the "erected thereon" criterion is not synonymous with the "attached to" criterion, but rather imposes a separate and distinct requirement. The first time was the 2010 EAB decision on Shell's offshore exploratory activities discussed above. While rejecting the Region's overly subjective test for determining when a vessel is "attached to the seabed and erected thereon,"[33] the EAB generally agreed with the Region's interpretation of what types of OCS activities satisfy these regulatory requirements. In the case of "erected thereon," this criterion was interpreted to mean that a vessel is attached to the seabed and "sufficiently secure and stable to commence operations," such as when a drill ship is attached at a fixed location and begins to drill into the seabed for the exploration or production of oil.[34] "Erected thereon" therefore requires the vessel to be securely attached to the seabed and relatively immobile.

The EAB provided further guidance on the meaning of "erected thereon" in a related case involving Shell's offshore exploratory activities in 2012.[35] In this subsequent case, the EAB affirmed as "a cogent, well-reasoned analysis of the statutory and regulatory requirements for an OCS source,"[36] the interpretation that the "erected thereon" criterion "is 'intended to reflect the process by which a vessel becomes attached to the seabed and used thereafter for the purpose of exploring, developing, or producing resources from the

[31] *See id.*
[32] *See Shell 2010*, 15 E.A.D. at 133-43.
[33] *See id.* at 143-48.
[34] *See id.* at 135-43.
[35] *See In re Shell Gulf of Mexico, Inc.*, 15 E.A.D. 470 (E.A.B. 2012) (*Shell 2012*).
[36] *Id.* at 493.

seabed.'"[37] In support of this conclusion, the EAB relied on the plain meaning of the verb "to erect," explaining that—

> its customary meaning "to construct" or "to build" suggests that the activity be carried out to a plan or specification, and that requiring the attachment to the seabed occur at the location where the OCS activity is reasonably expected to occur, *i.e.*, at the drill site, ensures that attachment to the seabed is related to engaging in the systematic and planned activity as an OCS source, and not for other purposes such as waiting out a storm or anchoring in a harbor to get supplies.[38]

Based on this interpretation of the regulation, the EAB concluded that merely attaching to the seabed is a necessary, but not sufficient, condition for classifying a drill ship as an OCS source under 40 C.F.R. § 55.2. In particular, the EAB determined that the vessel must also meet the "erected thereon" criterion, which requires that the vessel be "attached to the seabed *at a drill site* where it can reasonably be *expected to conduct OCS activities*"—namely those activities *directly related* to exploring, developing, or producing resources.[39]

Notably, in reaching this conclusion, the EAB emphasized the importance of the vessel's attachment to the seabed being in close proximity to where the applicant plans to undertake the activities as an OCS source. According to the EAB, the failure to impose this geographic limitation would "lead to absurd results" of classifying as a OCS source a drill ship that anchors "literally hundreds of miles away from the drill site where OCS activity will occur."[40] Based on this interpretation of the "erected thereon" criterion, there needs to be close geographic correspondence between the location where the vessel attaches to the seabed and the location where an authorization has been provided to conduct the OCS activity—whether that activity is the production of oil or the renewable generation of electricity.

Applying this guidance to the development of offshore wind farms in the OCS, it is clear that the CLVs do not meet these requirements for "erected thereon." One important factor in support of this conclusion is that the CLVs are not located and erected upon the seabed at the specific site of where the OCS activities are authorized to take place—namely the area where WTGs are located and generating electricity. Rather, the vessels are simply laying cable along a route from the WTGs to the landfall location near the onshore substation. As a result, a CLV will be attaching its anchors many miles away from the

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[37] *Id.* at 491 (quoting Supplemental Statement of Basis for Proposed OCS PSD Permits, *Noble Discoverer* Drillship, at 23 (July 6, 2011) (Supplemental Statement).
[38] *Id.* at 491 (citing Supplemental Statement at 24 and dictionary definitions of "to erect").
[39] *Id.* at 491 (emphasis added).
[40] *Id.* at 491-92. This interpretation is also consistent with the requirements for calculating the "potential to emit" of the OCS source. In particular, the OCS regulations include the emissions of vessels servicing or associated with an OCS source only "while at the source and while enroute to or from the source within 25 miles of the source." 40 C.F.R. §55.2 (definition of potential emissions).

center point of the wind farm. In the case of South Fork Wind, this distance will likely range up to 60 miles from the center of the wind farm as the CLV travels from the WTGs to the offshore substations and then onto the onshore substation; future projects could see even longer distances. Based on these considerations, it is clear that the CLVs will not be functionally operating as a fixed structure erected upon the seabed—such as when a drill ship attaches to the seabed and operates as a stationary source for the exploration or production of oil. Nor will these vessels be fixed in one location like the jack-up vessels or the offshore substations.

CBP Rulings: The CBP also has issued numerous rulings confirming that OCS vessel activities, similar to those of CLVs used for developing offshore wind farms, are not subject to the coastwise custom and navigation laws[41] under the OCSLA.[42] These CBP rulings further bolster the conclusion that such CLVs also do not meet the same OCSLA requirement contained in the OCS source definition.

In the case of those vessels using DPS, the CBP has repeatedly ruled that such vessels do not meet the requirements of OCSLA section 4(a)(1) and thus are not regulated by the coastwise custom and navigation laws.[43] The CBP's rationale for its rulings was that DPS vessels lack "any permanent or temporary attachment to the seabed" and, without such actual physical attachment, the vessel cannot be classified as "a coastwise point" subject to U.S. laws, as required by OCSLA section 4(a)(1).[44] In addition, the CBP has ruled that a vessel is not attached to the seabed when the vessel is "connected temporarily to the piles by a winch" and "used solely for pipe laying purposes and not for the purpose of 'exploring for, developing, or producing resources' from the OCS" for purposes of the OCSLA.[45] The CLVs are connected to the anchors by a pull-ahead winch, and the logic for pipe laying applies equally to the laying of transmission cable on the seafloor.

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[41] Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Title 46 of the United States Code covers the coastwise laws, including the Jones Act, that are administered by CBP.

[42] The OCSLA provision of most relevance in this case is section 4(a)(1), which extends all U.S. laws (including the coastwise custom and navigation laws) to those "installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom." 43 U.S.C. § 1333(a)(1).

[43] *See* Customs Letter Ruling HQ H012082 (Aug. 27, 2007) (recognizing long-standing precedent that dynamically positioned vessels on the installation location of piles is not subject to coastwise regulations under OCSLA); Customs Letter Ruling HQ 115134 (Sept. 27, 2000) (ruling that floating offshore service facility is not subject to customs and navigation laws pursuant to OCSLA insofar as "onboard vessel propulsion system," rather than anchoring was used to maintain the vessel's position next to the drilling unit); Customs Letter Ruling HQ 113838 (Feb. 25, 1997) (ruling that custom and navigation laws do not apply to a saturation diving vessel that maintains its position with a DP system without the use of anchors); Customs Letter Ruling HQ 109576 (July 12, 1988) (ruling that vessel is not attaching to the seabed in cases where the vessel maintains its position by a DP system).

[44] *See* Customs Letter Ruling HQ H012082.

[45] Customs Letter Ruling HQ 115799 (Sept. 30, 2002). *See also* Customs Letter Ruling HQ 115531 (Dec. 3, 2001) (ruling that customs and navigation laws do not apply under OCSLA to a dynamically positioned vessel that is hooked to concrete pads on the seabed during the installation of those concrete pads); Customs Letter Ruling HQ 111126 (Aug. 16, 1990) (ruling that a vessel is attached to the seabed by moving the anchors of other vessels).

These CBP rulings further underscore that it is appropriate for EPA to determine here that CLVs do not meet the "attached to" criterion for classifying a vessel as an OCS source under the Part 55 OCS regulations.

Federal Court Decisions: Courts have found that section 4(a)(1) of OCSLA does not regulate drill ship vessels that are not attached to the sea floor and erected thereon. One example is *Cunningham v. Offshore Specialty Fabricators, Inc.*,[46] in which a federal district court found that the drill ship was not erected on the seabed because the deployed anchors did not sufficiently attach the vessel in order to render it an OCS source.[47] The court specifically compared the drill ship's activities to other cases regarding the use of anchors, such as when a vessel drops eight large anchors to stabilize its position but is not actually erected on the OCS, and when a tender vessel is anchored to the seabed but not erected on the OCS like a jack-up rig.[48]

In *Global Industries Offshore LLC v. Pipeliners Local Union 798*, a federal district court in Louisiana considered the applicability of OCSLA section 4(a)(1) to a dispute stemming from a construction project consisting of 90 miles of pipeline laid in the Gulf of Mexico.[49] The process involved welding individual pieces of pipe into one continuous pipeline as it was lowered into the Gulf of Mexico while a derrick barge was stationary with tension machines holding the pipeline off the back of the vessel.[50] The court determined that the derrick barge did not utilize a traditional anchor system but rather positioned itself using a DPS and was attached to the seabed through a "suction pile."[51] In interpreting OCSLA section 4(a)(1), the court deferred to CBP rulings providing that DPS vessels operating on the OCS for pipe laying purposes do not fall under the provisions of the OCSLA, finding that OCSLA section 4(a)(1) did not apply to the time period that the derrick barge was installing pipeline on the OCS.[52]

CLVs used for offshore wind projects are very similar to the cases of *Cunningham* and *Global Industries Offshore*. Like in *Cunningham*, where the mere fact that a vessel was anchored to the seafloor did not give rise to a determination that the vessel achieved OCS

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[46] No. 5:04-CV-282, 2010 WL 11628021, at **2-5 (E.D. Tex. Aug. 17, 2010).
[47] *Id.* at *7; *see Demette v. Falcon Drilling Co.*, 280 F.3d 492, 496 (5th Cir. 2002) (OCSLA applied to an oil rig attached to the seabed and erected on the OCS for the purpose of drilling for oil because the rig was stationary and jacked up over the OCS), *overruled on other grounds by Grand Isle Shipyard, Inc. v. Seacor Marine, LLC*, 589 F.3d 778 (5th Cir. 2009); *see also United States v. Kaluza*, Criminal Action No. 12-265, 2013 WL 6490341 (E.D. La. Dec. 10, 2013) (OSCLA applied to *Deepwater Horizon* because the rig was attached to the seabed through a physical drill pipe and erected on the OCS as an installation necessary for the removal of oil), *aff'd in part*, 780 F.3d 647 (5th Cir. 2015).
[48] *Cunningham*, No. 5:04-CV-282, 2010 WL 11628021 at *7; *see United States v. Pickett*, 598 F.3d 231, 236-37 (5th Cir. 2010); *see Demette*, 280 F.3d at 499-500 n.28; *cf. Global Indus. Offshore LLC v. Pipeliners Local Union 798*, No. Civ.A. 04-1249, 2006 WL 724815, at **3-4 (W.D. La. Mar. 16, 2006).
[49] 2006 WL 724815 at **1-2.
[50] *Id.*
[51] *Id.* at *3. Suction piles are used as mooring anchors and foundations for anchoring large offshore installations, such as oil platforms, offshore drillings, and accommodation platforms, to the seafloor.
[52] *Id.*

source status, the occasions during which CLVs use anchors and pull-ahead winches for additional pulling power do not make the CLV an OCS source.

Furthermore, the CLV that would be used for Orsted projects is like the derrick barge used in *Global Industries Offshore*, as laying pipeline is similar to laying cable. While the derrick barge in *Global Industries Offshore* was attached to the seabed through a suction pile, the court still found that the vessel was not subject to the OCSLA. In the case of Orsted's projects, a CLV is not planned to be permanently or continuously attached to the seabed at all, other than the use of an anchor for supplying sufficient pulling force for ploughing and cable burial operations.

These court decisions further underscore that a CLV should not be considered "attached to the seabed, which may be erected thereon for the purpose of exploring, developing or producing resources" within the meaning of OCSLA section 4(a)(1), thereby precluding the classification of CLVs as a OCS source under the Part 55 regulations. Furthermore, if the CLV activities are not an OCS source, then only those emissions from CLVs while within 25 miles of the centroid of the WDA can be considered direct emissions of the OCS source when calculating the source's potential to emit.[53]

**IF A CABLE-LAYING VESSEL USING ANCHORS IS CLASSIFIED AS AN OCS SOURCE, THE BOUNDARIES OF THE SOURCE MUST BE LIMITED TO ONLY THOSE VESSEL ACTIVITIES IN CLOSE PROXIMITY OF THE WIND TURBINE GENERATORS.**

If EPA, despite the reasons described above, determines that a CLV is an OCS source subject to Part 55 regulation, the key question becomes how to define the geographic boundaries of the OCS source. One possible approach is to limit the boundaries to the primary OCS activities in the WDA, which only consist of the construction of the offshore WTGs and substations and diesel generators on the offshore substations. The other might be to extend the boundaries beyond the WDA along the full length of the export cable route in federal waters—which could stretch out well beyond 25 miles of the centroid of the WDA. This latter approach is inconsistent with the "common sense notion of a plant," as defined by EPA regulatory guidance described below.[54]

The relevant Part 55 regulations—as interpreted by the EAB and courts—require EPA to aggregate into one OCS source the CLV activities and the primary OCS source activities related to the wind farm. That policy requires the Agency to limit the geographic scope of the combined OCS source to only those CLV activities occurring within 25 miles of the centroid of the WDA or in close proximity thereto. To put in other words, EPA lacks the authority under its current aggregation policy to extend out boundaries for lengthy

[53] *See* 40 C.F.R. §55.2 (definition of potential emissions).

[54] In the case of Vineyard Wind, for which a draft permit is publicly available, EPA established two discrete OCS sources. One consists of the pollutant-emitting facilities and activities located within the WDA, which generally includes the offshore WTGs and other related facilities and activities in the WDA. The other includes the anchor-pulling CLV activities that are to be undertaken completely outside and apart from the WDA in the federal waters of Nantucket Sound with several miles of intervening ocean within the jurisdiction of the State. Vineyard Wind OCS Guidance at 9. EPA Region 1 is evaluating whether or not to follow the Vineyard Wind permitting decision in the upcoming permitting of other projects.

distances beyond the centroid of the WDA, as reflected in the hypothetical illustration provided in Attachment A. As reflected in the attached illustration, the OCS boundaries in some cases could extend out as far as 76 miles from the centroid of the OCS source and even require the expansion of the OCS source along the length of multiple export routes in the case of those offshore wind projects having more than one export cable route.

Requirement to Aggregate. Even if the EPA could find that a CLV meets the "attached to" and "erected thereon" criteria (which is doubtful based on the many reasons discussed above), a CLV clearly cannot meet the last criterion—"used for the purpose of exploring, developing, or producing resources" from the seabed"[55]—when it is evaluated as a separate and distinct standalone source. Therefore, EPA must aggregate CLV activities with the other primary construction source activities in the WDA.

First, as discussed above, the function and design of a CLV is to install offshore electric transmission cable on the seabed.[56] This activity, particularly when evaluated on its own, is different from the activities of the primary OCS source—namely the generation of electricity by the operation of offshore WTGs and other associated activities in the WDA. Wind electric generation and bulk power transmission and control have different North American Industry Classification System (NAICS) Codes (221115 and 221121, respectively).

In order for EPA to make an affirmative finding that the CLV is being used for the purpose of developing or producing resources in the OCS, the Agency must link or combine the supporting activities of the CLV with the primary OCS source activities related to the construction of the WTGs and substations in the WDA. Making this linkage, in effect, results in the aggregation of CLV activities with WTGs and other energy-producing activities in the WDA. By contrast, treating the CLV activities as a separate standalone source means, by definition, the CLV activities themselves are just laying export cable and not exploring, developing, or producing resources in the OCS.

This conclusion is bolstered by the long-standing NSR policy for the Agency to aggregate "support facilities" with a different NAICS Code than the primary facility that is producing the principal product. In this hypothetical, the source consists of both the primary facility that "is determined by its principle product (or group of products) produced or distributed" by the facility, as well as the "support facilities" that "convey, store, or otherwise assist in the production of the principal product."[57] One notable example provided in EPA guidance

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[55] *Shell 2012*, 15 E.A.D. at 491 (citation omitted). The courts have also recognized that a vessel must satisfy all three of these requirements in order to be subject to U.S. laws under OCSLA section 4(a)(1). *See Demette*, 280 F.3d at 496 (establishing a test for when OCSLA applies).

[56] The First Circuit's decision in *Alliance to Protect Nantucket Sound v. U.S. Dept. of the Army*, 398 F.3d 105 (1st Cir. 2005), that an offshore data collection tower not used for exploration or development of resources on the OCS is properly regulated by the Army Corps of Engineers under the OCLSA is not relevant here. That case specifically interprets the language in the OCSLA with regard to the jurisdiction of the Army Corps to permit structures on the OCS as specified in 43 U.S.C. § 1333(e), which has no bearing in the current situation.

[57] *See* EPA's New Source Review Workshop Manual at A.3 (October 1990); *see also* EPA Fact Sheet for the Cape Wind Offshore Renewable Energy Project at 22 (Cape Wind Project).

is the collocation of a power plant that generates electricity and a silicon wafer and semiconductor manufacturing facility. Even though these two facilities have different NAICS Codes, current EPA policy requires that they be treated as part of the same source because "the power plant supports the primary activity of the facility" to manufacture these semiconductor wafer products.[58]

EPA has confirmed the application of this source aggregation policy in the case of the OCS NSR permit for the Cape Wind Farm. In particular, the technical support document for the draft NSR permit concluded: "Facilities that convey, store, or otherwise assist in the production of the principal product, which are called support facilities, may therefore be considered part of the same stationary source even if their own two-digit [NAICS] code would differ from the facilities involved in the primary activity."[59] EPA made this determination with respect to those support vessels involved in the construction of the windfarm at the project site, concluding that these vessel activities "are not unrelated activities, but rather components of a larger activity" and that "each vessel and each vessel attachment are **part of a single, integral project**."[60] Based on these considerations, the Agency determined that "it is reasonable to **aggregate all vessel attachments** over both space … and time" and thereby treated "all stationary source vessel activities during Cape Wind Phase I as constituting a single OCS source." [61]

The regulations expressly require that a vessel satisfy all of the OCS applicability criteria, including the criteria that the vessel be engaged in exploring, developing, or producing resources. This is the case regardless of whether there happens to be an adjacent OCS source undertaking those offshore activities. For the reasons discussed above, the regulations expressly require the CLV satisfy all of the OCS applicability requirements before that vessel can be treated as an OCS source. As a result, EPA can only find the CLV is engaged in exploring, developing, or producing resources on the OCS if it combines or aggregates the CLV activities with the WTGs and associated equipment in the WDA that are used for the production of electricity on the OCS.

Limitation on Geographic Scope. If a CLV is part of the primary OCS source, then EPA must define the geographic scope of that combined OCS source in accordance with the current federal aggregation policy for defining the boundaries of a "stationary source" under the federal NSR program. That aggregation policy bars the Agency from extending the OCS source boundaries beyond the WDA along the full length of the export cable route to the onshore substations. Rather, as discussed below, the Agency must limit the geographic scope of the combined OCS source to only those CLV activities occurring within 25 miles of the centroid of the WDA or in close proximity thereto.

When determining whether groups of emission sources are to be aggregated into one "stationary source" for air permitting purposes, EPA issued new guidance in 2019 that looks to the "common sense notion of a plant" and avoids combining or aggregating

[58] *See* EPA's New Source Review Workshop Manual at A.3.
[59] Cape Wind Project at 22.
[60] *Id.* at 22-23 (emphasis added).
[61] *Id.* at 23 (emphasis added).

pollutant-emitting activities that would not fit within the ordinary meaning of "building, structure, facility, or installation."[62] With respect to the considerations that must be undertaken in this case-by-case analysis, EPA focused its analysis on the following three factors with regard to emission sources: (1) whether they belong to the same industrial grouping; (2) are located on one or more contiguous or adjacent properties; and (3) under the common control of the same person or persons.[63]

EPA's interpretation of "adjacent" in the 2019 guidance is consistent with prior OCS source determinations as well as prior EAB decisions. Even before EPA finalized the physical proximity interpretation in the guidance discussed above, EPA relied on this type of approach in the OCS source determination for Vineyard Wind.[64] When undertaking the third step in the source determination analysis, EPA referenced the long-standing approach of disaggregating from a single source those activities that are many miles apart similar to multiple sources along a pipeline or a transmission line.[65] EPA also referenced the draft version of EPA's new guidance noted above and determined that it would apply the term "adjacent" consistent with the reasoning set forth in the draft (which was ultimately finalized unchanged).[66] In particular, EPA noted that the separation of 15 nautical miles from the closest point of the WDA would be of too great a distance to be considered in close proximity and thus included in the OCS source definition for the project. Furthermore, EPA considered that the several miles of ocean within state jurisdiction (outside the OCS) was yet another reason supporting separating out the export cable activity located in Nantucket Sound.[67]

As for whether EPA can aggregate sources separated by 60 miles or more and expand source modeling along the linear length of the export cable, there are several important considerations in defining the boundaries of the OCS source. First, there are limits on EPA's authority to extend the geographic boundaries of the source far beyond the centroid of the WDA. This limitation on EPA's authority was acknowledged by the EAB in the opinion concerning the drill ships used by Shell Offshore, Inc. in its OCS oil explorations.[68] Specifically, the EAB rejected the argument that side-by-side lease blocks constituted contiguous or adjacent property for aggregation purposes.[69] Instead, the EAB adopted a much narrower, common sense interpretation of the phrase "contiguous or adjacent properties." That interpretation does not "require[e] aggregation of emissions producing

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[62] *See* EPA, Memorandum, *Interpreting "Adjacent" for New Source Review and Title V Source Determinations in All Industries Other than Oil and Gas*, at 4 (Nov. 26, 2019) (*Interpreting "Adjacent" Guidance*) (citation omitted), available at https://www.epa.gov/sites/production/files/2019-12/documents/adjacent_guidance.pdf.

[63] *Id.* at 3. As noted earlier, wind electric generation and electric power transmission systems are not part of the same industrial grouping and have different North American Industry Classification System (NAICS) codes. Thus, the WTG and the export cable also would fail to meet the industrial grouping factor for purposes of determining whether sources are adjacent and should be aggregated as a single NSR source for permitting.

[64] *See* Vineyard Wind OCS Guidance at 10-11.

[65] *Id.* at 4.

[66] *Id.* at 9.

[67] *Id.* at 10-11.

[68] *See In re Shell Offshore, Inc.*, 13 E.A.D. 357 (EAB 2007).

[69] *Id.* at 384-85.

activities spanning hundreds of miles interspersed with vast swaths of open water that is accessible to the public would distort the ordinary meaning of 'building, structure, facility, or installation" in a manner that EPA did not intend when it promulgated the definition."[70]

Second, the EAB cited two examples that EPA provided in the preamble to the PSD rule—a pumping station along a pipeline and a coal mine connected by a 20-mile rail line to an electric generator—as circumstances where sources should not be aggregated due to the intervening distance. These examples, the EAB notes, demonstrate that where the emission units are separated by a number of miles, a continuous pipeline and rail line are not sufficient connections to be considered "contiguous or adjacent properties" within the PSD regulations.[71] The EAB observes that "contiguous or adjacent properties" must be interpreted to mean more "substantial connectedness, proximity, or continuity that would correspond to a common understanding of building, structure, facility, installation, or plant."[72]

Thus, it is physical proximity—which reflects the common sense notion of what is a stationary source—that must be considered by the Region when establishing which emission sources should be included in the stationary source for PSD permitting purposes. As a result, an OCS source should be limited to only those activities that are "close to," "next to," "not distant," or "nearby."[73] Otherwise, for multiple projects, the edge of the CLV activities could be over 60 miles from the center of the other activities in the wind farm. An indicative example is provided in Attachment A. As offshore wind projects become larger and further offshore, the distances of export cables likely will increase. EPA should not extend the geographic boundaries of the OCS source to include the CLV activities spanning long distances from, for example, the electrical service platforms in the WDA to the nearshore cable landfall location. Such an approach would be inconsistent with EPA's established approach to aggregation under the NSR program.

## CONCLUSION

The applicable statutory and regulatory OCS requirements, as well as judicial precedent interpreting these provisions, support a conclusion that CLV activities, where the vessel is using anchors for propulsion, do not meet the applicability criteria for an OCS source. As discussed above, CLVs fail to meet the applicability criteria for "attached" and "erected thereon." However, in the event that EPA were to conclude that these types of CLV activities are an OCS source (which we believe is not the case), these vessel activities should be aggregated with the primary OCS source in the WDA. Further, the Agency should limit the geographic scope of the combined OCS source under EPA's current aggregation policy. The policy requires EPA to include CLV activities only to the extent that they have physical proximity to the primary OCS source, which is limited to 25 miles from the centroid of the WDA.

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[70] *Id.* at 384.
[71] *Id.* at 385.
[72] *Id.* (internal footnote omitted).
[73] *Interpreting "Adjacent" Guidance* at 7.

ProvPort
(Construction Emission Estimates)

New Bedford
(Construction
Emission Estimates)

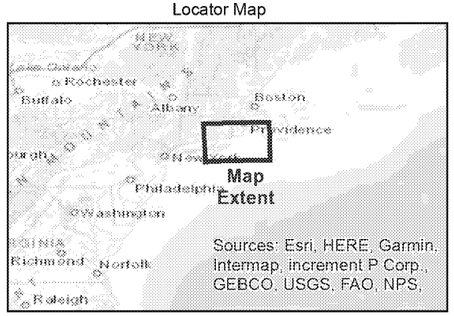
Port of New London
(Construction Emission Estimates)

Substation

Shinnecock Fish Dock, Inc.,
(Operation/Maintenance Emission Estimates)

12.2 mi.
27.8 mi.
14.5 mi.
25.9 mi.
25 mi.
43.7 mi.
61.8 mi.
76 mi.
62.1 mi.
47.5 mi. (Sparrow's Pt)
47.3 mi. (Norfolk)

Locator Map




## Legend

- Estimated Project Center
- Midpoint Between MWA Buffer/SFEC Intersection and Shinnecock Vessel East/West Route Turning Point
- Port
- 3-Nautical Mile State Waters Boundary (3.45 Statute miles)
- 25-Nautical Mile Federal Waters Boundary
- Vessel Route
- SFEC and Project OCS/Permit Area

**South Fork Export Cable (SFEC)**

- Onshore Substation
- SFEC

Source:
ESRI online map service; World Topographic Map.

N

0 9.5 19
Miles

0 10 20
Kilometers

South Fork Wind | Powered by Ørsted & Eversource

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

**South Fork Export Cable and Project OCS/Permit Area, Ports, and Vessel Routes**

JACOBS

DVR \\dc1vs01\GISProj\O\Orsted\SFWF\Maps\SFWF\2020\AirPermit\20200930_SFWF_COA_CombinedOCS.mxd mcotterb 9/30/2020 12:35:02 PM

Appointment

**From:** Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent:** 5/28/2021 6:11:58 PM
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]; Kim, Eunjung [Kim.Eun@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Stephen Fotis [scf@vnf.com]; Marnie.Funk@shell.com

**Subject:** Meeting with Shell
**Location:** Microsoft Teams Meeting

**Start:** 6/3/2021 7:30:00 PM
**End:** 6/3/2021 8:00:00 PM
**Show Time As:** Busy

**Required Attendees:** Carbonell, Tomas; Stephen Fotis; Marnie.Funk@shell.com; Kim, Eunjung

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Appointment

**From:** Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent:** 5/28/2021 6:09:50 PM
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]; Kim, Eunjung [Kim.Eun@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Stephen Fotis [scf@vnf.com]; Marnie.Funk@shell.com

**Subject:** Meeting with Shell
**Attachments:** External meeting request - EPA (May 26, 2021).DOCX
**Location:** Microsoft Teams Meeting

**Start:** 6/3/2021 7:30:00 PM
**End:** 6/3/2021 8:00:00 PM
**Show Time As:** Tentative

**Required Attendees:** Carbonell, Tomas; Stephen Fotis; Marnie.Funk@shell.com; Kim, Eunjung

External meeting request - EPA (M...

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Appointment

**From:** Goffman, Joseph [Goffman.Joseph@epa.gov]
**Sent:** 5/26/2021 6:31:21 PM
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Stephen Fotis [scf@vnf.com]; Marnie.Funk@shell.com; Kim, Eunjung [Kim.Eun@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Culligan, Kevin [Culligan.Kevin@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Harvey, Reid [Harvey.Reid@epa.gov]

**Subject:** Meeting with Shell
**Attachments:** External meeting request - EPA (May 26, 2021).DOCX
**Location:** Microsoft Teams Meeting

**Start:** 6/3/2021 7:30:00 PM
**End:** 6/3/2021 8:00:00 PM
**Show Time As:** Busy

**Required Attendees:** Carbonell, Tomas; Stephen Fotis; Marnie.Funk@shell.com; Kim, Eunjung; Peter Tsirigotis (Tsirigotis.Peter@epa.gov); Culligan, Kevin; Grundler, Christopher; Harvey, Reid

External meeting request - EPA (M...

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# *[ SEQ CHAPTER \h \r 1]External Meeting Request Form for OAR*

Today's Date: **May 26, 2021**

Requesting Organization: **Shell Oil Company (thru Van Ness Feldman)**

Title of the Meeting: **Clean Air Act regulation of methane emissions from oil and gas sector**

Purpose: **To follow-up on initial discussions regarding possible options, approaches, and strategies for developing new regulations for limiting methane emissions from existing oil and gas sources.**

Background: **The regulation of methane is an area where Shell has been a leader and looks forward to working constructively and proactively with EPA.**

Is this meeting related to ongoing litigation: **No.**

Earliest possible date for the meeting: **Targeted time is June 3 at 3:30 PM**

Last possible date for the meeting: **Targeted time is June 3 at 3:30 PM**

Is the meeting urgent and if so, why:

Requested Time Length: **30 minutes**

Have you met with anyone within EPA:

Invitees: **Joe Goffman and Tomas Carbonell**

External Participants (to include email addresses): **Stephen Fotis of Van Ness Feldman and Marnie Funk of Shell**

Teleconference Required: **Yes**

Video Conference Required: **Yes**

Point of Contact for the Meeting: **Stephen Fotis of Van Ness Feldman: 202 413-2321 and** [ HYPERLINK "mailto:scf@vnf.com" ]

***Please email this form back to OAR_Invitations@epa.gov***

Message

**From:** Stephen Fotis [scf@vnf.com]
**Sent:** 6/15/2021 1:46:23 PM
**To:** Goffman, Joseph [Goffman.Joseph@epamail.epa.gov]
**CC:** Kabanda, Thierry [Kabanda.Thierry@epa.gov]
**Subject:** Invitation to Address the LPPC CEOs on June 24

Joe – On behalf of the Large Public Power Council (LPPC), I would like to invite you to speak at LPPC's annual summer CEO meeting which will take place virtually on June 24th. Our CEOs and senior staff would greatly value hearing priorities for the agency and your perspective on issues impacting the public power sector related to climate change. This event will take place on Thursday, June 24th from 11:30 a.m. to 1:00 p.m. and we can accommodate your schedule and availability during this timeframe. The format of the event will be a moderated discussion, with an opportunity for you to provide opening remarks followed by a question and answer period. Our CEOs will be visible on the virtual webinar platform and will actively engage during the question and answer period. This will be a private, invite-only event. In addition to our CEOs, senior executives and staff of our LPPC member companies will be given viewing rights only. Press will not be invited. As you may remember, LPPC represents 27 of the largest public power systems in the U.S. LPPC member utilities are located in 21 states and Puerto Rico. Collectively our members provide power to more than 30 million people, more than 10% of the U.S. population, in some of the nation's largest cities, including Seattle, Los Angeles, Austin, Orlando, and New York.
We hope you can join us in June.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com

Appointment

**From:** Rakosnik, Delaney [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=274573739A9F446883072599086EDEDD-RAKOSNIK, D]
**Sent:** 4/13/2021 1:50:50 PM
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]; Stephen Fotis [scf@vnf.com]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Peter Tsirigotis (Tsirigotis.Peter@epa.gov) [Tsirigotis.Peter@epa.gov]; Mike Koerber (Koerber.Mike@epa.gov) [Koerber.Mike@epa.gov]; Culligan, Kevin [culligan.kevin@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Kim, Eun [Kim.Eun@epa.gov]
**CC:** Marnie.Funk@shell.com; Gunning, Paul [Gunning.Paul@epa.gov]; Steve.Craig@shell.com; William.Kovach@shell.com; dick.francis@shell.com; Lisa.Tiesman@shell.com; Cozzie, David [Cozzie.David@epa.gov]

**Subject:** Meeting with Shell re: Methane & GHG
**Attachments:** External meeting request_ (002) - Shell.DOCX; External meeting request_ (002) - Shell.DOCX; RE: Shell Teleconference Request
**Location:** Microsoft Teams Meeting

**Start:** 4/28/2021 8:00:00 PM
**End:** 4/28/2021 8:30:00 PM
**Show Time As:** Busy

**Required Attendees:** Goffman, Joseph; Stephen Fotis; Carbonell, Tomas; Peter Tsirigotis (Tsirigotis.Peter@epa.gov); Mike Koerber (Koerber.Mike@epa.gov); Culligan, Kevin; Grundler, Christopher; Kim, Eun
**Optional Attendees:** Marnie.Funk@shell.com; Gunning, Paul; Steve.Craig@shell.com; William.Kovach@shell.com; dick.francis@shell.com; Lisa.Tiesman@shell.com; Cozzie, David


External meeting request_ (002) - ...


RE: Shell Teleconference ...

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External meeting request_ (002) - ...

# *[ SEQ CHAPTER \h \r 1]External Meeting Request Form for Joe Goffman*

Today's Date: April 20, 2021

Requesting Organization: Shell Oil Company (thru Van Ness Feldman)

Title of the Meeting: Clean Air Act regulation of methane emissions from oil and gas sector

Purpose: To discuss options, approaches, and strategies for developing new regulations for limiting methane emissions from existing oil and gas sources and revising the existing methane regulations for new and modified oil and gas sources.

Background: The regulation of methane is an area where Shell has been a leader and looks forward to working constructively and proactively with EPA.

Earliest possible date for the meeting: The meeting has been schedule for Wednesday, April 28 at 4 PM.

Last possible date for the meeting:

Is the meeting urgent and if so, why?

Requested Time Length: 30 minutes

Invitees: Joe Goffman, Tomas Carbonell and other appropriate EPA staff

External Participants: Stephen Fotis of Van Ness Feldman and various Shell participants, including Marnie Funk, Dick Francis, Lisa Tiesman, William Kovach, Steve Craig, and Nicole St. Amand

Teleconference Required? Yes

Video Conference Required? Yes

Point of Contact for the Meeting: Stephen Fotis of Van Ness Feldman: 202 413-2321 and [ HYPERLINK "mailto:scf@vnf.com" ]

Message

**From:** Stephen Fotis [scf@vnf.com]
**Sent:** 4/20/2021 1:59:39 PM
**To:** Rakosnik, Delaney [rakosnik.delaney@epa.gov]
**Subject:** RE: Shell Teleconference Request
**Attachments:** External meeting request_ (002) - Shell.DOCX

Hi Delaney – Sorry for the delay in getting you a completed version of the external meeting request for Joe Goffman. As you know, our teleconference has already been scheduled for Wednesday, April 28 at 4 PM.
Thanks again for all of your assistance. Please let me know if you have questions.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com



**From:** Rakosnik, Delaney <rakosnik.delaney@epa.gov>
**Sent:** Tuesday, April 13, 2021 12:39 PM
**To:** Stephen Fotis <scf@vnf.com>
**Subject:** RE: Shell Teleconference Request

Caution: External Email.

Please fill out the attached form. Many thanks!!

**From:** Stephen Fotis <scf@vnf.com>
**Sent:** Tuesday, April 13, 2021 11:10 AM
**To:** Rakosnik, Delaney <rakosnik.delaney@epa.gov>
**Subject:** RE: Shell Teleconference Request

Hi Delaney – Thanks for getting back to me. Any chance we could push back the start time of the call to 4 PM EDT on Wednesday, April 28? Unfortunately, 3 PM doesn't work for us.
Thanks,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com



**From:** Rakosnik, Delaney <rakosnik.delaney@epa.gov>
**Sent:** Tuesday, April 13, 2021 9:55 AM
**To:** Stephen Fotis <scf@vnf.com>
**Subject:** RE: Shell Teleconference Request

Caution: External Email.

Hi Stephen,

Joe Goffman is happy to meet. How does April 28th at 3pm work for your schedules? I'm happy to explore other time options, if need be.

Many thanks!

Delaney Rakosnik
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-0935
Email: rakosnik.delaney@epa.gov

Hi Joe and Tomas – On behalf of Shell, I would like to request a meeting by teleconference with you on methane and related GHG regulatory issues. In addition to myself, Marnie Funk from the Shell Washington Office and most likely several key Shell officials from Houston will be participating in the call. We can be available next week to talk if that can work with your schedules. I hope you're both doing well and look forward to working constructively together again on the methane and other GHG regulatory issues on behalf of Shell.
Best,
Stephen

**Stephen C. Fotis | Partner**

Van Ness Feldman LLP

1050 Thomas Jefferson Street, NW
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com | vnf.com